

2003 EDITION

Real Estate Law Book

*Occupational Code, Related Statutes,
Administrative Rules and Related Rules
relating to the operations of real estate brokers
and salespersons*



Michigan Department of
Labor & Economic Growth
Board of Real Estate Brokers & Salespersons
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PREFACE

This book is reprinted under the editorial direction of the Legislative Service Bureau from the text of the *Michigan Compiled Laws*, supplemented through Act 103 of the 1989 Regular Session of the Michigan Legislature, and from the text of the *Michigan Administrative Code*, supplemented through Issue No. 6 of the 1989 *Michigan Register*, and is made available pursuant to § 24.258 of the *Michigan Compiled Laws*.

Materials in boldface type, particular catchlines and annotations to the statutes, are not part of the statutes as enacted by the Legislature.

Legal Editing and Law Publications Division
Legislative Services Bureau

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**OCCUPATIONAL CODE
Act 299 of 1980**

An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE 1

339.101 Short title.

Sec. 101. This act shall be known and may be cited as the "occupational code".
History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.102 Meanings of words.

Sec. 102. For purposes of this act, the words defined in sections 103 to 105 have the meanings ascribed to them in those sections.
History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.103 Definitions; B, C.

Sec. 103. (1) "Board" means, in each article which deals with a specific occupation, the agency created in that article composed principally of members of the regulated occupation. In all other contexts, board means each agency created under this act.

(2) "Censure" means an expression of disapproval of a licensee's or registrant's professional conduct, which conduct is not necessarily a violation of this act or a rule promulgated or an order issued under this act.

(3) "Competence" means a degree of expertise which enables a person to engage in an occupation at a level which meets or exceeds minimal standards of acceptable practice for the occupation.

(4) "Complaint" means an oral or written grievance.

(5) "Controlled substance" means a drug, substance, or immediate precursor as set forth in section 7212, 7214, 7216, 7218, or 7220 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7212, 333.7214, 333.7216, 333.7218, and 333.7220 of the Michigan Compiled Laws, not excluded pursuant to section 7227 of Act No. 368 of the Public Acts of 1978, being section 333.7227 of the Michigan Compiled Laws.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1994, Act 257, Imd. Eff. July 5, 1994.

339.104 Definitions; D to K.

Sec. 104. (1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce or an authorized

representative of the director of the department of commerce.

(3) "Disability" means an infirmity that prevents a board member from performing a duty assigned to the board member.

(4) "Files" means the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical dominion of a board abolished by this act and the records, memoranda, opinions, minutes, and similar written materials of a board created under this act.

(5) "Formal complaint" means a document that states the charges of each alleged violation and is prepared by the department or the department of attorney general after a complaint has been received by the department.

(6) "General public" means each individual residing in this state who is 18 years of age or older, other than a person or the spouse of a person who is licensed or registered in the occupation or who has a material financial interest in the occupation being regulated by the specific article in which the term is used.

(7) "Good moral character" means good moral character as defined in section 1 of Act No. 381 of the Public Acts of 1974, being section 338.41 of the Michigan Compiled Laws.

(8) "Incompetence" means a departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation.

(9) "Knowledge and skill" means the information, education, practical experience, and the facility in applying that information, education, and practical experience.
History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1996, Act 151, Imd. Eff. Mar. 25, 1996.

339.105 Definitions; L to S.

Sec. 105. (1) "License" means the document issued to a person under this act which will enable that person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act. License includes a document issued by the department which permits a school, institution, or person to offer training or education in an occupation or which permits the operation of a facility, establishment, or institution in which an occupation is practiced. License includes a permit or approval.

(2) "Licensee" means a person who has been issued a license under this act.

(3) "Limitation" means a condition, stricture, constraint, restriction, or probation attached to a license or registration relative to the scope of practice including the following:

(a) A requirement that the licensee or registrant perform only specified functions of the licensee's or registrant's occupation.

(b) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only for a specified period of time.

(c) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only within a specified geographical area.

(d) A requirement that restitution be made or certain work be performed before a license or registration is issued, renewed, or reinstated.

(e) A requirement that a financial statement certified by a person licensed as a certified public accountant be filed with the department at regular intervals.

(f) A requirement which reasonably assures a licensee's or registrant's competence to perform the licensee's or registrant's occupation.

(g) A requirement that all contracts of a licensee or registrant be reviewed by an attorney.

(h) A requirement that a licensee or registrant have on file with the department a bond issued by a surety insurer approved by the department or cash in an amount determined by the department.

(i) A requirement that a licensee or registrant deposit money received in an escrow account which can be disbursed only under certain conditions as determined by the licensee or registrant and another party.

(j) A requirement that a licensee or registrant file reports with the department at intervals determined by the department.

(4) "Occupation" means a field of endeavor regulated by this act.

(5) "Person" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those legal entities. Person includes a department, board, school, institution, establishment, or governmental entity.

(6) "Physical dominion" means control and possession.

(7) "Physician" means that term as defined in section 17001 and section 17501 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 and 333.17501 of the Michigan Compiled Laws.

(8) "Probation" means a sanction which permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated by this act.

(9) "Public access" means the right of a person to view and copy files pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(10) "Registrant" means a person who is registered under this act.

(11) "Registration" means the document issued to a person under this act which will enable that person to use a designated title, which use would be otherwise prohibited by this act.

(12) "Rule" means a rule promulgated under this act and pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(13) "State" means the District of Columbia or a commonwealth, state, or territory of the United States.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

ARTICLE 2

339.201 Department of licensing and regulation; appointment of director; designation of persons to investigate licensees or persons against whom complaints lodged.

Sec. 201. The department shall consist of a director as its executive head and other officers and employees appointed or employed by the department. The director shall be appointed by the governor, subject to the advice and consent of the senate, and shall hold office at the pleasure of the governor. The department shall designate only those persons who meet the qualifications for licensure established for an occupation regulated under article 7, 20, or 22 to investigate licensees or persons against whom complaints have been lodged.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at §§ 338.3501 of the Michigan Compiled Laws. For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Commerce to the Department of Consumer and Industry Services, see E.R.O. 1996-2, compiled at §§ 445.2001 of the Michigan Compiled Laws.

339.202 Licensure or registration; application; form; fees; requirements for issuance of license or registration; expiration date.

Sec. 202. (1) An application for licensure or registration shall be made on a form provided by the department and accompanied by the appropriate fees prescribed in article 4. Except as otherwise provided in this act, the department shall issue a license or registration to a person who meets the licensure or registration requirements set forth in a specific article and in rules promulgated under this act, subject to the exceptions set forth in section 203.

(2) The expiration date of a license or registration issued under this act shall be established by rule promulgated by the department under section 205, which rule shall not permit the issuance of a permanent license or registration.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

Administrative rules: R 339.1001 et seq. of the Michigan Administrative Code.

339.203 License or registration; issuance upon demonstration of unfair or inadequate requirements; review; fees; limitation; notice; approval or disapproval; practice by person licensed, registered, or certified under repealed act.

Sec. 203. (1) The department may issue a license or registration to a person pursuant to a specific article, if the person demonstrates to the satisfaction of the department and a board that the licensure or registration requirements do not constitute a fair and adequate measure of the person's knowledge and skills or that a required examination for receipt of a license or registration does not serve as an adequate basis for determining whether a person could perform an occupation with competence. The procedure to be followed in obtaining the review by the director and a board is prescribed in article 5. A person shall not have a license or registration issued under this section until the person pays the appropriate fees as prescribed in article 4.

(2) A license or registration issued under this article may be issued with a limitation.

The department shall notify the appropriate board of the department's intent to impose a limitation on the issuance of a license or registration of a person seeking a license or registration in the occupation for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 60 days after receipt of the notification by the department, neither approves nor disapproves the imposition of a limitation, the department may impose the limitation. A person who receives a license or registration with a limitation may receive a review of the limitation as provided in section 519.

(3) Notwithstanding any other provision of this act, a person licensed, registered, or certified under an act repealed by this act to practice an occupation on the day immediately preceding the effective date of this act shall be considered to be appropriately licensed, registered, or certified under this act until the expiration of the licensure, registration, or certification granted under the repealed act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

339.204 License or registration; renewal; requirements; continuing education requirement not subject to waiver; review procedure; fees; limitation; review; renewal as responsibility of licensee or registrant; renewal application; failure to notify department of change of address.

Sec. 204. (1) Unless otherwise provided in this act and subject to the limitations set forth in this section, the department shall renew the license or registration of a person who fulfills all of the following requirements:

(a) Has applied to the department on a form provided by the department for renewal of a license or registration. The application for renewal shall be received by the department on or before the date prescribed by the department for the expiration of the current license or registration.

(b) Has paid the appropriate fees prescribed in article 4.

(c) Has met the renewal requirements set forth in a specific article, rule, or an order issued under this act.

(2) Except as otherwise provided in this act, the department may renew the license or registration of a person who does not meet the requirements for renewal, if the person demonstrates to the satisfaction of the department and a board that the requirements for renewal as set forth in an article or rule do not constitute a fair and adequate measure of the person's knowledge and skills or that the requirements for renewal do not serve as an adequate basis for determining whether a person could continue to perform an occupation with competence. However, a requirement of attendance in a continuing education program shall not be waived as a requirement for the renewal. The procedure to be followed in obtaining a review of requirements for renewal by the director and a board is prescribed in article 5. The department shall not issue a license or registration under this subsection until the person seeking renewal pays the appropriate fees as prescribed in article 4.

(3) Except as otherwise provided in article 7, a license or registration renewed under this section may be renewed with a limitation. The department shall notify the appropriate board of the department's intent to impose a limitation on the renewal of a license of a person seeking license renewal in the occupation for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 30 days after receipt of the notification by the department, neither approves nor disapproves the imposition of a limitation, the department may impose the limitation. A person who receives a license or registration

renewed with a limitation may receive a review of that limitation as provided in section 519.

(4) It is the responsibility of the licensee or registrant to renew a license or registration. The department shall send a renewal application to the last known address of a licensee or registrant on file with the department. The failure of a licensee or registrant to notify the department of a change of address shall not extend the expiration date of a license or registration and may result in disciplinary action.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

339.205 Promulgation of rules.

Sec. 205. The department shall promulgate rules to implement articles 1 to 6 and rules which are necessary and appropriate to enable the department to fulfill its role under this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.206 Examination or test; review and approval of form and content; administration, scoring, and monitoring; providing equipment, examination room, written form, and other items; delegation of duties.

Sec. 206. (1) Before an examination or other test required under this act is administered and except as otherwise provided in this act, the department and the appropriate board, acting jointly, shall review and approve the form and content of the examination or other test. The examination or test shall be structured to provide a measure of whether a person has sufficient knowledge and skills to perform an occupation with competence.

(2) Except as otherwise provided in this act, the department shall administer, score, and monitor the examination or test, but may delegate any or all of those duties to a board or to any other person.

(3) Except as otherwise provided in this act, the department shall provide the equipment, examination room, written form, and any other item needed to administer the examination or test, but may delegate all or any of these duties to a board or any other person.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.207 Licensing or approval of school, institution, or other person offering training or education; approval or recognition of continuing education program; recommendation by board; request.

Sec. 207. (1) If provided in an article, the department may issue a license to, or grant approval to, a school, institution, or other person offering training or education in an occupation.

(2) If provided in an article, the department may grant approval or recognition to a program of continuing education, unless the approval or recognition of the program is the responsibility of a board.

(3) A board shall make a recommendation on the licensure or approval or recognition of a school, institution, or other person or a program within 90 days after a request for that recommendation is made by the department.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.208 Files of board; physical dominion; public access.

Sec. 208. The department shall have physical dominion over the files of each board. The department shall ensure that applicable laws concerning public access to the files are met.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.209 Office services; administrative and secretarial staff, clerks, and employees.

Sec. 209. (1) The department shall furnish office services to each board and perform managerial, administrative, and budgetary functions for each board.

(2) The department shall appoint administrative and secretarial staff, clerks, and employees necessary for the proper exercise of the powers and duties of a board.

(3) The department, subject to the strictures imposed by the civil service commission, may fire, suspend, promote, demote, or transfer a person providing administrative or secretarial service for a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.210 Contracting with persons or agencies to implement act and fulfill responsibilities of department or board.

Sec. 210. The department, on its own behalf and on behalf of a board created under this act, may contract with persons or agencies who are not employees or agencies of the department to implement this act and to fulfill the responsibilities of the department or a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.211 Orientation program for board members.

Sec. 211. The department shall provide a comprehensive orientation program for each individual appointed and confirmed as a member of a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.212 Annual report.

Sec. 212. The department shall prepare and publish an annual report describing the activities of the department and each agency created pursuant to this act. The annual report shall be filed with the governor and the legislature.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.213 Temporary license or certificate of registration; nonrenewable; validity; limitation.

Sec. 213. (1) If a person has not previously been denied a license or a certificate of registration or had a license or a certificate of registration revoked or suspended, the department may grant a nonrenewable temporary license or certificate of registration to an applicant for licensure or registration or transfer of licensure or registration pursuant to articles 8 to 25.

(2) As approved by a board, a temporary license or certificate of registration issued under this section is valid until 1 or more of the following occurs:

(a) The results of the next scheduled examination are available.

(b) The results of the next required evaluation procedure are available.

(c) A license or certificate of registration is issued.

(d) The next examination date of an examination for licensure or registration in the applicable occupation, if the applicant does not take the examination.

(e) The applicant fails to meet the requirements for a license or certificate of registration.

(f) A change in employment is made.

(3) A temporary license or certificate of registration may be limited as defined in article 1.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.214 Applicant whose records unavailable from foreign country; examination; reciprocal license.

Sec. 214. An applicant for licensure or registration pursuant to articles 8 to 25 whose records relative to education or experience required by an article are unavailable from a foreign country shall be allowed, upon approval of the board and the department, to take an examination or apply for a reciprocal license upon submitting the following to the department:

(a) A notarized affidavit approved by the department stating the total number of years of education received, the name of the school or schools attended, the dates each school was attended, the degree obtained, the courses taken, the grades received, and the names of each former employer.

(b) A notarized statement approved by the department from a governmental official testifying to unavailability of the necessary records.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.215, 339.216 Repealed. 1994, Act 257, Imd. Eff. July 5, 1994.

Compiler's note: The repealed sections pertained to creation of the commission on professional and occupational licensure and recommendations made to the legislature.

ARTICLE 3

339.301 Boards; composition; qualifications of members; director as ex officio member.

Sec. 301. Each board shall consist of 9 voting members. Except as otherwise provided in this act, 6 of the members of a board shall be individuals who have a license or registration in the occupation which the board monitors. Except as otherwise provided in this act, 3 of the members of a board shall represent the general public. The director shall be an ex officio member without vote of a board, but is not a member for purposes of section 5 of article V of the state constitution of 1963 or for determining a quorum. A member, in addition to fulfilling the requirements set forth in an article, shall be not less than 18 years of age and shall be a resident of this state.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990.

339.302 Nomination and appointment of board members.

Sec. 302. The governor shall appoint an individual as a member of a board with the advice and consent of the senate, including an individual appointed to fill a vacancy on a board. In making an appointment, the governor shall seek nominations from a wide range of interested groups and persons, including appropriate professional associations, consumer associations, labor unions, and other organizations or individuals.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.303 Terms of board members; vacancy; appointment and removal of members; qualifications; terms.

Sec. 303. (1) The term of a member appointed to a board shall be 4 years except that an individual appointed to fill a vacancy on a board which vacancy results from a member's resignation, death, disability, or removal for cause by the governor shall serve for the balance of the term of the member replaced and may be reappointed for not more than 2 full terms. A vacancy shall be filled in the same manner as the original appointment was made. The governor shall appoint an individual as a member of a board, subject to the advice and consent of the senate, within 60 days after a vacancy occurs and within 60 days after the senate disapproves an appointment by the governor. The governor may remove a member of a board or committee in accordance with section 10 of article V of the state constitution of 1963.

(2) Except as provided in subsection (1), an individual shall not be appointed to or serve for more than 2 consecutive terms.

(3) Subject to subsection (4), for a board created or first appointed on or after January 1, 1990, the governor may appoint, as the initial members of the board who are required to be licensed or registered, individuals who meet either or both of the following qualifications:

(a) Are certified or otherwise approved by a national organization that certifies or otherwise approves individuals in the occupation to be licensed or registered by the board.

(b) Have actively practiced the occupation licensed or registered by the board or taught in an educational institution which prepares applicants for licensure or registration in that occupation, or a combination of both, for not less than the 2 years immediately preceding their appointment.

(4) Within 3 years after October 17, 1990, each individual appointed under subsection (3) shall be licensed or registered in the occupation licensed or registered by the board to which the individual was appointed.

(5) Of the initial members of a board created or first appointed after January 1, 1990, the terms of 3 of the members, including 2 of the members who have a license or registration in the occupation which the board monitors and 1 of the members representing the general public, shall be 4 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members representing the general public, shall be 3 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members who represents the general public, shall be 2 years; and the terms of the remaining members shall be 1 year.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981;--Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990;--Am. 1994, Act 257, Imd. Eff. July 5, 1994.

339.303a Commencement of terms.

Sec. 303a. The terms provided for in this act shall commence on the following dates:

Accountancy	July 1
Architects	April 1
Athletic board of control	April 1
Barbers	October 1
Collection agencies	July 1

Cosmetology	January 1
Employment agencies	October 1
Land surveyors	April 1
Landscape architects	July 1
Mortuary science	July 1
Nursing home administrators	January 1
Professional engineers	April 1
Real estate appraisers	July 1
Real estate brokers and salespersons	July 1
Residential builders	April 1
Social workers	October 1

History: Add. 1990, Act 269, Imd. Eff. Oct. 17, 1990;--Am. 1995, Act 104, Imd. Eff. June 23, 1995;--Am. 1995, Act 183, Imd. Eff. Oct. 23, 1995;--Am. 1996, Exec. Order 1996-2.

339.304 Compensation and expenses of board members.

Sec. 304. Annually the legislature shall fix the per diem compensation of a member of a board. Travel or other expenses incurred by a member of a board in the performance of an official function shall be payable by the department pursuant to the standardized travel regulations of the department of management and budget.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.305 Board; meetings; quorum; voting by proxy prohibited; conduct of meeting; availability of files.

Sec. 305. (1) A board shall meet as often as necessary to fulfill its duties under this act, but shall meet not less than 2 times a year and at other dates set by the director. A majority of the members appointed and serving shall constitute a quorum. A member of a board shall not vote by proxy. A board shall conduct its meetings pursuant to Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(2) The files of the board shall be available to the public under section 208.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.306 Board; election of officers; vacancy; bylaws; report.

Sec. 306. (1) Annually a board shall elect a chairperson, a vice-chairperson, and other officers the board determines necessary. A board may fill a vacancy in an office of the board for the balance of the 1-year term.

(2) A board may adopt bylaws for the regulation of its internal affairs.

(3) A board shall report its activities to the department annually and as often as the director orders.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.307 Board; creation within department; duties; attendance of board member at informal conference; assisting department.

Sec. 307. (1) Each board created by this act shall be created within the department.

(2) A board's duties shall include the interpretation of a licensure or registration requirement of an article, and, if necessary, the furnishing of aid in an investigation conducted under article 5. At the discretion of the board, a member of that board may attend an informal conference conducted under section 508. A board shall assist the

department in the implementation of this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.308 Promulgation of rules.

Sec. 308. (1) A board shall promulgate rules as required in the article in which it is created as are necessary and appropriate to fulfill its role.

(2) A board may promulgate rules to set the minimal standards of acceptable practice for an occupation for which the board is created.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.309 Assessment of penalties.

Sec. 309. A board, upon completion of a hearing conducted pursuant to section 511, shall assess a penalty or penalties as provided in article 6.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.310 Aiding department in interpreting licensure or registration requirements.

Sec. 310. A board shall aid the department in interpreting a licensure or registration requirement set forth in this act which is incomplete or subjective in nature to determine whether the person seeking a license or a certificate of registration or a renewal has met the requirements for the issuance or renewal.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.313 Recommending licensure of school, institution, or other person; recommending approval or recognition of program offering training or education.

Sec. 313. (1) A board shall recommend to the department whether to grant licensure to a school, institution, or other person or approval or recognition of a program which offers training or education in the occupation for which the board is created, unless it is the board's function to grant the licensure, approval, or recognition.

(2) Before recommending the licensure, approval, or recognition of a school, institution, or other person or a program, a board shall ascertain whether the school, institution, or other person or program provides the type of training which will provide a graduate with the knowledge and skills required to perform the occupation with competence.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.314 Recommending approval or recognition of continuing education program.

Sec. 314. A board shall recommend to the department the approval or recognition of a program of continuing education which is required by an article, unless it is the board's function to grant the approval or recognition.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.315 Failure to receive licensure, approval, or recognition; protest; review.

Sec. 315. A school, institution, or other person which fails to receive licensure or approval, or approval or recognition of a program offered by the school, institution, or person may protest that decision and be granted an opportunity for review of that decision by the department under section 520 or 521.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.316 Examination or test; development; consideration of material in closed

session; alternative form of testing.

Sec. 316. (1) Unless otherwise provided in an article, a board and the department shall develop an examination or test required by an article. The board and the department in developing an examination or test may adopt an examination or test prepared by another agency if the board and the department determine that the examination or test serves as a basis for determining whether a person has the knowledge and skills to perform an occupation with competence.

(2) The material required by the board and the department to develop an examination or test may be considered by the board in a closed session, if the board meets the requirements of section 7 of the open meetings act, 1976 PA 267, MCL 15.267.

(3) A board and the department, in determining the form the recommended examination or test shall take, shall give special emphasis to an alternative form of testing which permits a person to demonstrate a special qualification a person may have which is not evident under a written examination, but which is related to an occupation. The alternative form of testing shall be structured to give weight to a person's experience, noninstitutional training, and innate skills and shall be flexible enough to enable a person with a mental or physical disability to demonstrate that the person has the requisite knowledge and skills.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980, Am 1998, Act 90, Imd Eff. May 13, 1998.

339.317 Surrendering files of abolished board; personnel, office space, and items or equipment to be utilized by successor board.

Sec. 317. (1) A board abolished under this act shall surrender physical dominion over any files to the department.

(2) The successor board, until the department determines otherwise, shall utilize the personnel, office space, and items or equipment which were utilized by the abolished board and which are needed for the board to function.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

ARTICLE 4

339.401 Specific amounts to be charged for licenses, registrations, and other activities.

Sec. 401. The specific amounts to be charged for licenses, registrations, and other activities provided for in this act shall be as prescribed in the state license fee act, Act No. 152 of the Public Acts of 1979, being sections 338.2201 to 338.2277 of the Michigan Compiled Laws.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

339.402 Definitions.

Sec. 402. As used in this article:

(a) "Expiration date" means the date prescribed in rules promulgated by the department in accordance with section 202(2).

(b) "Reinstatement" means the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked.

(c) "Relicensure" means the granting of a license to a person whose license has lapsed for failure to renew the license within 60 days after the expiration date.

(d) "Reregistration" means the granting of a registration to a person whose registration has lapsed for failure to renew the registration within 60 days after the expiration date.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989.

339.403 Collection of fees charged under contract; termination of contract.

Sec. 403. (1) This act does not prohibit a person who has a contract with the department or any other person providing direct services from collecting fees directly from an applicant, registrant, or licensee.

(2) If the department terminates a contract with a person who has been administering a licensing or registration examination to applicants for licensure or registration in a specific profession, and the department itself begins to administer the examination, the department shall not charge an applicant a fee greater than the fee charged under the terminated contract unless the examination fee for that profession is increased under the state license fee act, Act No. 152 of the Public Acts of 1979,

being sections 338.2201 to 338.2277 of the Michigan Compiled Laws.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989.

339.405 Nonrefundable application processing fee; examination or inspection fee; fee for initial license or registration period.

Sec. 405. An application for a license or registration shall be accompanied by a nonrefundable application processing fee. The department may also require that the application be accompanied by the fee for a required examination or inspection or the fee for the initial license or registration period.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989.

339.407 Examination fee; forfeiture; reexamination fee; publication of application deadline.

Sec. 407. (1) An individual who is required to take an examination shall pay an examination fee before being scheduled for an examination.

(2) An individual who is scheduled for examination or reexamination and who fails to appear shall forfeit the examination fee.

(3) An individual who fails all or part of an examination may be reexamined, if eligible, after paying for the complete examination or such parts of the examination as must be repeated.

(4) The department shall publish in its application instructions the deadline by which applications must be received in order for an applicant to be scheduled for a required examination.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989.

339.409 Payment of fee as condition to issuance of license and registration; amount; period for completion of requirements for licensure or registration; forfeiture of fees; effect of void application.

Sec. 409. (1) The department shall not issue a license or registration to a person who has completed the requirements for a license or registration or who seeks to renew a license or registration until the person has paid the license or registration fee.

(2) License and registration fees shall be prescribed on a per year basis. If licenses and registrations are established by rules promulgated by the department under section 202 as biennial or triennial renewals, the fee required shall be twice or 3 times, as appropriate, the per year amount.

(3) Unless otherwise provided by this act or rules promulgated under this act, all requirements for licensure or registration shall be completed by the applicant within 1 year after receipt of the application by the department or mailing of a notice of an incomplete application to the last known address on file with the department, whichever is later. If the requirements are not completed, the fees paid shall be forfeited to the department and the application shall be void. A person whose application has been determined to be void under this subsection shall submit a new application and fees and shall meet the standards in effect on the date of receipt by the department of the new application.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989;—Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002.

339.411 Failure to renew license or registration; lapse; extension; conditions to relicensing or reregistration; rules; procedure for reinstatement of license or registration.

Sec. 411. (1) Subject to subsection (2), a person who fails to renew a license or registration on or before the expiration date shall not practice the occupation, operate, or use the title after the expiration date printed on the license or registration. A license or registration shall lapse on the day after the expiration date.

(2) A person who fails to renew a license or registration on or before the expiration date shall be permitted to renew the license or registration by payment of the required license or registration fee and a late renewal fee within 60 days after the expiration date.

(3) Except as otherwise provided in this act, a person who fails to renew a license or registration within the time period set forth in subsection (2) may be relicensed or reregistered without examination and without meeting additional education or training requirements in force at the time of application for relicensure or reregistration if all of the following conditions are met:

(a) The person applies within 3 years after the expiration date of the last license or registration.

(b) The person pays an application processing fee, the late renewal fee, and the per year license or registration fee for the upcoming licensure or registration period.

(c) Penalties and conditions imposed by disciplinary action in this state or any other jurisdiction have been satisfied.

(d) The person submits proof of having completed the equivalent of 1 year of continuing education within the 12 months immediately preceding the date of application or as otherwise provided in a specific article or by rule, if continuing education is required of licensees or registrants under a specific article.

(4) Except as otherwise provided in this act, a person may be relicensed or reregistered subsequent to 3 or more years after the expiration date of the last license or registration upon showing that the person meets the requirements for licensure or registration as established by the department in rules or procedures which may require a person to pass all or part of a required examination, to complete continuing education requirements, or to meet current education or training requirements.

(5) Unless otherwise provided in this act, a person who seeks reinstatement of a

license or registration shall file an application on a form provided by the department, pay the application processing fee, and file a petition to the department and the appropriate board stating reasons for reinstatement and including evidence that the person can and is likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of the department or board. The procedure to be followed in conducting the review of a petition for reinstatement is prescribed in article 5. If approved for reinstatement, the person shall pay the per year license or registration fee for the upcoming license or registration period, in addition to completing any requirements imposed in accordance with section 203(2).

History: Add. 1988, Act 463, Eff. Sept. 1, 1989;--Am. 1989, Act 261, Eff. Jan. 1, 1990;--Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002.

ARTICLE 5

339.501 Lodging or filing complaint.

Sec. 501. A complaint which alleges that a person has violated this act or a rule promulgated or an order issued under this act shall be lodged with the department. The department of attorney general, the department, a board, or any other person may file a complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.501a Definitions.

Sec. 501a. As used in this article:

(a) "Complainant" means a person who has filed a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the complainant.

(b) "Respondent" means a person against whom a complaint has been filed who may be a person who is or is required to be licensed or registered under this act.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

339.502 Investigation; correspondence file; acknowledgment of complaint; complaint made by department.

Sec. 502. The department, upon receipt of a complaint, immediately shall begin its investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making the complaint. If the complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person making the complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.503 Investigation; petition to issue subpoena.

Sec. 503. The department shall conduct the investigation required under section 502. In furtherance of that investigation, the department may request that the attorney general petition the circuit court to issue a subpoena requiring a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the

investigation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.504 Investigation; status report; time extension; closing and reopening complaint; preparation of appropriate action; informal conference.

Sec. 504. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed. The total number of extensions permitted under this section shall be included in the report required by section 212.

(2) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the complaint shall be closed by the department. The reasons for closing the complaint shall be forwarded to the respondent and complainant, who then may provide additional information to reopen the complaint.

(3) If the report of the investigative unit made pursuant to subsection (1) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

- (a) A formal complaint.
- (b) A cease and desist order.
- (c) A notice of summary suspension.
- (d) A citation.

(4) At any time during its investigation or after the issuance of a formal complaint, the department may bring together the complainant and the respondent for an informal conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1989, Act 261, Eff. Jan. 1, 1990.

339.505 Summary suspension of license or certificate of registration; order; affidavit; petition to dissolve order; hearing; granting requested relief; record.

Sec. 505. (1) After an investigation has been conducted, the department may issue an order summarily suspending a license or a certificate of registration issued pursuant to articles 8 to 25 based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief, that an imminent threat to the public health, safety, and welfare exists. Thereafter, the proceedings described in this article shall be promptly commenced and decided.

(2) A person whose license or certificate of registration has been summarily suspended under this section may petition the department to dissolve the order. Upon receiving a petition, the department immediately shall schedule a hearing to decide whether to grant or deny the requested relief.

(3) An administrative law hearings examiner shall grant the requested relief dissolving the summary suspension order, unless sufficient evidence is presented that an imminent threat to the public health, safety, and welfare exists which requires emergency action and continuation of the director's summary suspension order.

(4) The record created at the hearing to dissolve a summary suspension order shall

become part of the record on the complaint at a subsequent hearing in a contested case.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.506 Cease and desist order; hearing; request; application to restrain and enjoin further violation.

Sec. 506. (1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist shall be entitled to a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) Upon a violation of a cease and desist order issued under this act, the department of the attorney general may apply in the circuit court of this state to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.507 Informal conference; criminal prosecution; other action authorized by act.

Sec. 507. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or certificate of registration issued pursuant to articles 8 to 25 shall be in addition to and not in place of an informal conference; criminal prosecution; or proceeding to deny, revoke, suspend, or place a limitation on, a license or certificate of registration or any other action authorized by this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.508 Formal complaint and notice; service; options; attendance at informal conference; methods of settlement; representation.

Sec. 508. (1) After an investigation has been conducted and a formal complaint prepared, the department shall serve the formal complaint upon the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing processes and offering the respondent a choice of 1 of the following opportunities:

(a) An opportunity to meet with the department to negotiate a settlement of the matter.

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws.

(c) An opportunity to proceed to a contested case hearing as set forth in section 71 of Act No. 306 of the Public Acts of 1969, being section 24.271 of the Michigan Compiled Laws.

(2) A respondent upon whom service of a formal complaint has been made pursuant to this section may select, within 15 days after the receipt of notice, 1 of the options described in subsection (1). If a respondent does not select 1 of those options within the time period described in this section, then the department shall proceed to a contested

case hearing as described in subsection (1)(c).

(3) An informal conference may be attended by a member of the board, at the discretion of that board, or by a member of a committee and may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the department. A settlement may include the revocation, suspension, or limitation of a license or registration; censure; probation; restitution; or a penalty provided for in article 6. A board may reject a settlement and require a contested case hearing under section 71 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.271 of the Michigan Compiled Laws.

(4) An authorized employee or agent of the department may represent the department in any contested case hearing held pursuant to Act No. 306 of the Public Acts of 1969.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1989, Act 261, Eff. Jan. 1, 1990.

339.510 Showing compliance with act, rule, or order.

Sec. 510. This act does not prevent a person against whom a complaint has been filed from showing compliance with this act, or a rule or an order promulgated or issued under this act, under section 92 of Act No. 306 of the Public Acts of 1969, as amended.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.511 Hearing.

Sec. 511. If an informal conference is not held or does not result in a settlement of a complaint, a hearing pursuant to section 92 of Act No. 306 of the Public Acts of 1969, as amended, shall be held. A hearing under this section may be attended by a member of a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.512 Subpoena.

Sec. 512. The department or the department of the attorney general may petition a circuit court to issue a subpoena which shall require the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding conducted under section 511 or 508.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.513 Findings of fact and conclusions of law; hearing report; copies; complaint involving professional standards of practice.

Sec. 513. (1) Except as provided in subsection (3), at the conclusion of a hearing conducted under section 511, the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the appropriate board in a hearing report. The submitted hearing report may recommend the penalties to be assessed as prescribed in article 6.

(2) A copy of a hearing report shall be submitted to the person who made the complaint and to the person against whom the complaint was lodged.

(3) For a complaint involving professional standards of practice under article 7, a majority of the members of the board who have not participated in an investigation of the complaint or who have not attended an informal conference, shall sit to make

findings of fact in relation to the complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.514 Determination of penalties to be assessed; hearing report; transcript; time limit; board member prohibited from participating in final determination.

Sec. 514. (1) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the board receiving the hearing report shall meet and make a determination of the penalties to be assessed under article 6. The board's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to a board upon request. If a transcript or a portion of the transcript is requested, the board's determination of the penalty or penalties to be assessed under article 6 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(2) If a board does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (1), the director may determine the appropriate penalty and issue a final order for occupations regulated under articles 8 to 25.

(3) A member of a board who has participated in an investigation on a complaint filed with the department or who has attended an informal conference shall not participate in making a final determination in a proceeding on that complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.515 Petition for review generally.

Sec. 515. A person seeking a license or certificate of registration or renewal under this act may petition the department and the appropriate board for a review if that person does not receive a license or certificate of registration or renewal.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.516 Petition for review; contents.

Sec. 516. A petition submitted under section 515 shall be in writing and shall set forth the reasons the petitioner feels the licensure or registration should be issued.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.517 Consideration of petition; alternative form of testing; personal interview.

Sec. 517. In considering a petition submitted under section 515 for an occupation regulated under articles 8 to 25, the department and the appropriate board may administer an alternative form of testing to the petitioner, or conduct a personal interview with the petitioner, or both.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.518 Issuance of license or certificate of registration or renewal based on review of petitioner's qualifications.

Sec. 518. The department may issue a license or certificate of registration or renewal for an occupation regulated under articles 8 to 25, if based on a review of the qualifications of the person who submitted a petition under section 515, the department and the appropriate board determine that the person could perform the occupation with competence.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.519 Petition to review limitation on license, certification of registration, or

renewal; reply; removal of limitation.

Sec. 519. (1) A person who has had a limitation placed on a license, a certificate of registration, or the renewal of a license or certificate of registration under section 203 or 204, within 30 days after the limitation is placed on the license, certificate of registration, or renewal of the license or certificate of registration, may petition the department in writing for a review of the decision to place the limitation.

(2) The department, in reply to a petition submitted under subsection (1), shall set forth the reasons the department determined that the limitation should be placed on the license, certificate of registration, or renewal of a license or certificate of registration. The reply to the person who submits a petition under section 519 shall be sent to the petitioner within 15 days after receipt of the petition.

(3) The department and a board may remove the limitation, if, based on a review of the petitioner's qualifications, the department and the appropriate board determine that the person who submitted a petition under subsection (1) could perform with competence each function of the occupation without the limitation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.520 Petition to review decision denying person licensure, approval, or recognition.

Sec. 520. A school, institution, program, or other person which has been denied licensure, approval, or recognition within 30 days after the decision, may petition the department in writing for a review of that decision.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.521 Consideration of petition; reinvestigation; reply.

Sec. 521. In considering a petition submitted under section 520, the department and an appropriate board may reinvestigate the school, institution, or person and the curriculum of the school, institution, or program offered by the person before replying to the petition. The reply to the petition shall set forth the reasons licensure, approval, or recognition had not been granted. The reply shall be sent to the petitioning school, institution, or person.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.522 Conducting proceedings on grievance lodged before effective date of act.

Sec. 522. Notwithstanding any other provision of this act, if an oral or written grievance was lodged before the effective date of this act against a person licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.551 Additional definitions.

Sec. 551. As used in sections 553 to 559:

(a) "Employee of the department" means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

(b) "Citation" means a form prepared by the department pursuant to section 553.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

339.553 Citation generally.

Sec. 553. (1) An employee of the department may issue a citation to a person licensed or registered under this act or required to be licensed or registered under this act if the employee observes or deduces from an investigation, inspection, or complaint that conduct or conditions exist or have existed which are in violation of this act or rules promulgated or orders issued under this act.

(2) A citation may be sent to a respondent by certified mail, return receipt requested, or may be delivered in person by the issuing employee.

(3) A citation shall contain all of the following:

(a) The date of the citation.

(b) The name and title of the individual issuing the citation.

(c) The name and address of the respondent, indicating that the respondent is being cited for a violation of the act or rules promulgated or orders issued under the act.

(d) A brief description of the conduct or conditions which are considered to be a violation of the act or rules or orders issued under the act and a reference to the section of the act, the rule, or order the respondent is alleged to have violated.

(e) The proposed penalties or actions required for compliance, including the payment of a fine which shall not exceed \$100.00 for each violation.

(f) A space for the respondent to sign as a receipt for the citation.

(g) A space where the respondent may accept the citation and agree to comply or may indicate that the violation contained in the citation is contested.

(h) A notice that the respondent must accept or reject the terms of the citation within 30 days.

(i) A brief description of the hearing process and the process for settlement through an informal conference as described in section 508.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

339.555 Citation; notice of acceptance or denial of violation; signature; return; records; citation as final order; disclosure; removal from records; explanation; statement.

Sec. 555. (1) A respondent shall have 30 days in which to notify the department in writing that the person accepts the conditions set forth in the citation or that the person does not admit to the violation cited.

(2) If the respondent accepts the conditions set forth in the citation, the respondent, within 30 days after receiving the citation, shall sign the citation and return it to the department along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material shall be placed in the person's records with the department, indicating the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section shall have the same force and effect as a final order issued by a board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within 5 calendar years after the citation is issued, the department shall remove the citation and accompanying material from the records. If a respondent so chooses, a 1-page explanation prepared by the respondent shall be placed in the department's files and shall be disclosed each time the issuance of the citation is disclosed.

(3) If the respondent does not admit to the violation cited, the person may so state on the citation and return 1 copy to the department within the 30 days after the receipt of the citation. Upon receiving a copy of the citation not admitting to the violation, the

process initiated by section 508 of the act shall be invoked, with the citation serving as the formal complaint.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

339.557 Effect of signing citation.

Sec. 557. The signing of a citation as an indication that the citation was received by the respondent shall be considered to be only a receipt of, not an admission to, the violation cited.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

339.559 Review of pending cases; notice.

Sec. 559. Beginning on January 1, 1990, the department may review all pending cases and identify those matters occurring before January 1, 1990 which would have been addressed by a citation, had such a program existed at the time the complaint was filed with the department. The department shall notify each respondent that the person may conclude the department's proceedings by accepting the penalties and proposed compliance actions as set forth in a citation or may continue the proceedings under the provisions of the process initiated in section 508.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990.

ARTICLE 6**339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; violation as misdemeanor; penalties; injunctive relief; exceptions; "affected person" defined; investigation; remedies; performance of services by interior designer.**

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) A person, school, or institution which violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(4) A person, school, or institution which violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable, except as provided in section 735, by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(5) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(6) Nothing in this act shall apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Building design.

(c) Any activity for which the person is licensed under 1929 PA 266, MCL 338.901 to 338.917.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(7) As used in subsection (5), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a board established pursuant to this act, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(8) An investigation may be conducted under article 6 to enforce this section. A person who violates this section shall be subject to the strictures prescribed in this section and section 506.

(9) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(10) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994; Am. 1998, Act 250, Eff. Oct. 1, 1998.

339.601a Advisory subcommittee on interior design; membership; purpose; list of qualified individuals; rules; stamp; "interior designer" defined.

Sec. 601a. (1) There is created in the department an advisory subcommittee on interior design to consist of not more than 5 individuals selected by the department. Of the 5 individuals, 2 shall be licensed architects and the remaining members shall be interior designers chosen from a list of interior designers submitted to the department by nationally recognized associations of interior designers. The department shall assure that the advisory subcommittee on interior design is fully functional not later than 6 months after the effective date of the amendatory act that added this section and shall cease to exist after it has reviewed the last application made under subsection (4)(c). The purpose of the advisory subcommittee on interior design is to verify, by majority vote of its members, the qualifications of interior designers who have not passed an examination as further described in subsection (4)(c) but who seek qualification for the performance of services described in section 601(10) on the basis of education and experience and to recommend the qualifications of those interior designers to perform the services described in section 601(10). The advisory subcommittee on interior design shall also compile a list of all individuals considered qualified to perform the services described in section 601(10). The advisory subcommittee on interior design shall give the list to the board of architects for review and consideration of those persons determined to have met the standards described in subsection (4). The

approval of individuals considered qualified shall occur not less than 90 days after the list is submitted to the board of architects. A person whose qualifications are not approved by the board of architects may appeal that determination to the director or his or her designee. The department shall make the list of persons determined to have met the standards described in subsection (4) electronically available to the state or any local unit of government

capable of issuing permits under the state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531.

(2) The director may promulgate rules to administer this section. The rules may include, but are not limited to, reasonable fees charged to individuals seeking qualification for performing services under section 601(10) and procedures for adding and removing individuals from the list of qualified interior designers.

(3) An interior designer shall have a rectangular nonembossed stamp with the interior designer's name, business address, title "interior designer", and certificate number issued by the national council for interior design qualification, if applicable. Use of the stamp shall be accompanied by the original signature of the interior designer.

(4) As used in this section and section 601, "interior designer" means an individual engaged in the activities described in section 601(10) who meets 1 or more of the following:

(a) Beginning on the effective date of the amendatory act that added this subsection, has proof of passing the complete 1997 examination or other examination adopted by reference by the department and offered by the national council for interior design qualification. For purposes of this subsection, that examination and the qualifications to sit for that examination are adopted by reference and any subsequent update or revision of that examination or the qualifications to sit for that examination may, by rule promulgated by the director, be adopted by reference by the department.

(b) Was engaged, before the effective date of the amendatory act that added this subsection, in the activities described in section 601(10) and has proof of passing any complete examination offered by the national council for interior design qualification. Passage of any past examination offered by the national council for interior design qualification is adequate to qualify an interior designer for the exemption described in section 601(10).

(c) Until the expiration of 1 year after the date of the establishment of the advisory subcommittee on interior design, demonstrates to the advisory subcommittee on interior design that he or she was engaged in the activities described in section 601(10) and meets the qualifications of education and experience that would confer eligibility for sitting for the 1997 or other examination offered by the national council for interior design qualification.

History: Add. 1998, Act 250, Eff. Oct. 1, 1998.

339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution which violates a section of this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate

of registration.

- (d) Revocation of a license or certificate of registration.
- (e) A civil fine to be paid to the department, not to exceed \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981.

339.603 Restitution; suspension of license or certificate of registration.

Sec. 603. If restitution is required to be made under section 602, the license or certificate of registration of the person required to make the restitution may be suspended until the restitution is made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

- (a) Practices fraud or deceit in obtaining a license or registration.
- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (c) Violates a rule of conduct of an occupation.
- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act which demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for

which a penalty is not otherwise prescribed.

- (i) Fails to comply with a subpoena issued under this act.
- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a

stipulation, settlement agreement, or a citation. History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981;--Am. 1989, Act 261, Eff. Jan. 1, 1990.

339.605 Action in name of state; intervention and prosecution by attorney general.

Sec. 605. The department may bring any appropriate action in the name of the people of this state to carry out this act and to enforce this act. If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2501 Definitions.

Sec. 2501. As used in this article:

(a) "Property management" means the leasing or renting, or the offering to lease or rent, of real property of others for a fee, commission, compensation, or other valuable consideration pursuant to a property management employment contract.

(b) "Property management account" means an interest-bearing or noninterest-bearing account or instrument used in the operation of property management.

(c) "Property management employment contract" means the written agreement entered into between a real estate broker and client concerning the real estate broker's employment as a property manager for the client; setting forth the real estate broker's duties, responsibilities, and activities as a property manager; and setting forth the handling, management, safekeeping, investment, disbursement, and use of property management money, funds, and accounts.

(d) "Real estate broker" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(e) "Real estate salesperson" means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

(f) "Employ" or "employment" means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor

relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article.

(g) "Independent contractor relationship" means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the

following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

(h) "Professional designation" means a certification from a real estate professional association demonstrating attainment of proven skills or education in a real estate occupational area, and may include the right to use a title or letters after the licensee's name that represent the designation bestowed by the certifying entity.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988;--Am. 1990, Act 269, Eff. July 1, 1991;--Am. 1993, Act 93, Imd. Eff. July 13, 1993;--Am. 1994, Act 333, Imd. Eff. Oct. 18, 1994; -- Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003.

Cited in other sections: Section 339.2501 et seq. is cited in SS 125.539, 338.2237, 418.119, 438.31c, 445.1651a, 445.1656, 445.1675, 487.2067, 493.80, and 559.111.

339.2502 Board of real estate brokers and salespersons; creation.

Sec. 2502. The board of real estate brokers and salespersons is created.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2502a. License renewal term.

Sec. 2502a. Beginning November 1, 2003, the department shall issue a license for real estate broker, associate real estate broker, and real estate salesperson for a term of 3 years.

History: Add. 2002, Act 611, Imd. Eff. Dec. 20, 2002.

339.2503 Exemptions; definition.

Sec. 2503. (1) This article shall not apply to an individual, partnership, association, or corporation, who as owner, sells or offers for sale a detached, single family dwelling, duplex, triplex, or quadruplex, which has never been occupied and which was built by the individual, partnership, association, or corporation while licensed under article 24. This article does not apply to an individual, partnership, association, or corporation, who as owner or lessor or as attorney-in-fact acting under a duly executed and recorded power of attorney from the owner or lessor, or who has been appointed by a court, performs an act as a real estate broker or real estate salesperson with reference to property owned by it, unless performed as a principal vocation not through a licensed real estate broker.

(2) This article shall not include the services rendered by an attorney at law as an attorney at law, nor shall it include a receiver, trustee in bankruptcy, administrator, executor, a person selling real estate under order of a court, nor a trustee selling under a deed of trust. This exemption of a trustee shall not apply to repeated or successive sales of real estate by the trustee, unless the sale is made through a licensed real estate broker.

(3) This article does not apply to a person who is regulated under the mortgage brokers, lenders, and servicers licensing act, Act No. 173 of the Public Acts of 1987, being sections 445.1651 to 445.1683 of the Michigan Compiled Laws, and who does not perform any other act requiring a license as a real estate broker, associate broker, or real estate salesperson.

(4) For the purposes of this article, "negotiate the mortgage of real estate" as described in section 2501, means engaging in activity not regulated under Act No. 173 of the Public Acts of 1987.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1987, Act 63, Imd. Eff. June 25, 1987;--Am. 1987, Act 174, Imd. Eff. Nov. 18, 1987;--Am. 1990, Act 269, Eff. July 1, 1991.

339.2504 Real estate broker's license; approved classroom courses; application; condition to taking examination; renewal or reinstatement of license; continuing education requirements; applicability; approval of person offering or conducting course or courses of study; suspension or revocation of approval; prohibited representations; conduct of pre-licensure course; violation; penalties; real estate clinic, meeting, course, or institute; sponsoring studies, research, and programs.

Sec. 2504. (1) Before receiving a real estate broker's license, an applicant shall submit an application as described in section 2505 and shall have successfully completed not less than 90 clock hours of approved classroom courses in real estate of which not less than 9 clock hours shall be instruction on civil rights law and equal opportunity in housing. The 90 hours shall be in addition to the hours required to obtain a real estate salesperson's license.

(2) Before being permitted to take the real estate salesperson's examination, an applicant shall show proof of successful completion of not less than 40 clock hours of classroom courses in principles of real estate, of which not less than 4 clock hours shall be instruction on civil rights law and equal opportunity in housing.

(3) For purposes of subsections (1) and (2), approved courses may be on the following topics:

- (a) Real estate license law and related regulatory laws.
- (b) Real property law, including property interests and restrictions.
- (c) Federal, state, and local tax laws affecting real property.
- (d) Conveyances, including contracts, deeds, and leases.
- (e) Financing, including mortgages, land contracts, foreclosure, and limits on lending procedures and interest rates.
- (f) Appraisal of real property.
- (g) Design and construction.
- (h) Marketing, exchanging, and counseling.
- (i) The law of agency.
- (j) Sales and office management, including listing and selling techniques.
- (k) Real estate securities and syndications.
- (l) Investments, including property management.

(4) Except as otherwise provided in this subsection, before being permitted to renew an active real estate broker's or real estate salesperson's license, a licensee shall have successfully completed, within the preceding 12 months, not less than 6 clock hours of continuing education approved by the department involving any topics relevant to the management, operation, and practice of real estate and covering changes in economic conditions, law, rules, court cases, and interpretations, or any combination of those changes, relating to real property which are pertinent to the activities of a real estate broker or real estate salesperson. Beginning November 1, 2003, a licensee shall complete not less than 18 hours of continuing education per 3-year license cycle. A licensee shall complete at least 6 hours of the required 18 hours of continuing education courses during the time period from November 1, 2003 and

ending on December 31, 2004. During calendar year 2005, a licensee shall complete at least 6 hours of the required 18 hours of continuing education courses. During calendar year 2006, a licensee shall complete at least 4 hours of the required 18 hours continuing education courses. During calendar year 2007 and thereafter, a licensee shall complete at least 2 hours per calendar year of the required 18 hours of continuing education courses. Any education successfully completed by a licensee for further professional designation and approved by the department as continuing education may be counted toward the total continuing education credits required for the 3-year license cycle. Each licensee, in completing the appropriate number of clock hours, will have the option of selecting the education courses in that licensee's area of expertise, as long as the education courses are approved by the department and as long as at least 2 hours of an education course per calendar year involve law, rules, and court cases regarding real estate. Notwithstanding the provisions of this subsection, the department may renew the license of a licensee who has completed not less than 18 hours of continuing education in the subject matter areas required by this subsection during the 3-year license cycle but has not otherwise met the requirements of this section if the licensee provides evidence satisfactory to the department that he or she has good cause for not complying with the requirements in this subsection.

(5) The department may relicense without examination a licensee whose license has lapsed for less than 3 years if the licensee shows proof of completion of not less than 6 clock hours of continuing education for each year the license was lapsed, on topics as described in subsection (4).

(6) The department may relicense a broker whose license has lapsed for 3 or more continuous years if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Ninety clock hours of instruction described in subsections (1) and (3).

(c) Passing the examination required for licensure as a broker as provided for in section 2505(5).

(7) A salesperson whose license has been lapsed for 3 or more continuous years may be relicensed if the licensee provides proof of the successful completion of 1 of the following:

(a) Six clock hours of continuing education for each of the years the license was lapsed on topics described in subsection (4).

(b) Forty clock hours of instruction described in subsections (2) and (3).

(c) Passing the examination required for licensure as a salesperson as provided in section 2505(5).

(8) The department shall not apply the course credits used to meet continuing education requirements provided in subsections (4) through (7) towards the real estate broker's license education requirements provided in subsection (1), and course credits taken under real estate broker's license education requirements shall not be applied towards the continuing education requirements. The department shall apportion the approved course credits eligible for education requirements in subsection (1) and subsections (4) through (7) to meet either requirement upon the licensee's request.

(9) For real estate brokers, associate brokers, and salespersons who receive a license issued in the second or third years of a 3-year license cycle, continuing education

shall be in compliance with subsection (4), except for the following:

(a) A real estate broker, associate broker, or salesperson who receives a license issued in the second year of the 3-year license cycle is required to complete 12 hours of continuing education to renew his or her license.

(b) A real estate broker, associate broker, or salesperson who receives a license issued in the third year of the 3-year licensing cycle is required to complete 6 hours of continuing education to renew his or her license.

(10) A person who offers or conducts a course or courses of study represented to meet the educational requirements of this article first shall obtain approval from the department and shall comply with the rules of the department concerning curriculum, instructor qualification, grading system, and other related matters. In addition to other requirements imposed under rule, in order to receive approval a course shall be designed to be taught for not less than 1 clock hour, not including time spent on breaks, meals, or other unrelated activities, provided the course is only approved for less than 2 clock hours if, based upon the subject matter, course outline, instructional materials, methodology, and other considerations consistent with rules of the department, the department determines that the course objectives can be effectively met in the proposed time period. The department may suspend or revoke the approval of a person for a violation of this article or of the rules promulgated under this article. A person offering or conducting a course shall not represent that its students are assured of passing an examination required by the department. A person shall not represent that the issuance of departmental approval is a recommendation or indorsement of the person to which it is issued or of a course of instruction given by it. A pre-licensure course approved under this article shall be conducted by a local public school district, a community college, an institution of higher education authorized to grant degrees, or a proprietary school licensed by the department of career development under 1943 PA 148, MCL 395.101 to 395.103.

(11) A person who in operating a school violates subsection (10) is subject to the penalties set forth in article 6.

(12) The department may conduct, hold, or assist in conducting or holding, a real estate clinic, meeting, course, or institute, which shall be open to a person licensed under this article, and may incur the necessary expenses in connection with the clinic, meeting, course, or institute. The department, in the public interest, may assist educational institutions within this state in sponsoring studies, research, and programs for the purpose of raising the standards of professional practice in real estate and the competence of a licensee.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1983, Act 144, Eff. Jan. 1, 1985;--Am. 1984, Act 413, Eff. Mar. 29, 1985;--Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002; -- Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003.

339.2505 Real estate broker's license; application; contents; execution of application; effect of certain convictions; place of business; branch office license; contents of application for salesperson's license; proof; examinations.

Sec. 2505. (1) An applicant for a real estate broker's license shall file an application setting forth the applicant's present address, both of business and residence; the complete address of each former place where the applicant has resided or been engaged in business, or acted as a real estate salesperson, for a period of 60 days or more, during the 5 years immediately preceding the date of application. An applicant for a real estate broker's license shall state the name of the individual, sole proprietorship, partnership,

association, corporation, limited liability company, common law trust, or a combination of those entities and the location of the place for which the license is desired, and set forth the period of time which the applicant has been engaged in the business. The application shall be executed by the person, or by an officer or member of the applicant. An applicant for a real estate broker's license which is a partnership, association, corporation, limited liability company, common law trust, or a combination of those entities shall designate which individuals who are officers or members of the partnership, association, limited liability company, or corporation will be performing acts regulated by this article as principals.

(2) The department shall not issue a real estate broker's license to a new applicant who has been convicted of embezzlement or misappropriation of funds.

(3) A real estate broker shall maintain a place of business in this state. If a real estate broker maintains more than 1 place of business within the state, a branch office license shall be secured by the real estate broker for each branch office maintained. A branch office maintained in excess of 25 miles from the city limits in which the broker maintains a main office shall be under the personal, direct supervision of an associate broker.

(4) An applicant for a salesperson's license shall set forth the period of time during which the individual has been engaged in the business, stating the name of the applicant's last employer and the name and the place of business of the individual, partnership, association, limited liability company, corporation, common law trust, or combination of those entities then employing the applicant or in whose employ the applicant is to enter. The application shall be signed by the real estate broker in whose employ the applicant is to enter.

(5) Before issuing a license, the department may require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a real estate broker's or salesperson's license or of an officer or member of an applicant. The department shall require an applicant for a broker's or salesperson's license to pass an examination developed by the department or contracted for with a recognized outside testing agency establishing, in a manner satisfactory to the department, that the applicant has a fair knowledge of the English language, including reading, writing, spelling, and elementary arithmetic; a satisfactory understanding of the fundamentals of real estate practice and of the laws and principles of real estate conveyancing, deeds, mortgages, land contracts, and leases; the obligations of a broker to the public and a principal; and the law defining, regulating, and licensing real estate brokers and salespersons. The department may require written examination or written reexamination of a broker or salesperson, and in that case a passing score satisfactory to the department is required as a condition precedent to relicensure of a broker or salesperson. The department shall require proof that each applicant for a real estate broker's license has the equivalent of 3 years of full-time experience in the business of real estate or in a field that is determined by the department to be relevant and related to the business of real estate.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981;--Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988;--Am. 1988, Act 463, Eff. Sept. 1, 1989; -- Am. 2003, Act 196, Imd. Eff. Nov. 10, 2003.

339.2506 Delivering or mailing real estate salesperson's license to broker; display of licenses; notice of change of location; temporary license.

Sec. 2506. (1) The license of a real estate salesperson shall be delivered or mailed to the real estate broker by whom the real estate salesperson is employed and shall be kept

in the custody and control of the broker. A real estate broker shall conspicuously display the real estate broker's license and the license of each real estate salesperson employed by the real estate broker in the real estate broker's place of business. Written notice shall be given to the department by a licensee of a change of either a principal or branch business location.

(2) If the department determines that it will be unable to issue a real estate salesperson's license under subsection (1) within 2 weeks after the department determines that the applicant for a real estate salesperson's license has met all requirements for licensure, or the department is in fact unable to issue the real estate salesperson's license within 2 weeks, the department shall issue to the applicant, without payment of an additional fee, a temporary license pursuant to section 213.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 14, Imd. Eff. Feb. 18, 1988;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

339.2507 Discharge or termination of real estate salesperson; delivering or mailing salesperson's license to department; application for transfer of license; communication; performing regulated acts without license prohibited.

Sec. 2507. If a real estate salesperson is discharged or terminates employment with a real estate broker by giving the employer a written notice of the termination, the real estate broker shall deliver or mail by certified mail to the department, within 5 days, the real estate salesperson's license. If a written notice of termination of employment is not served upon the real estate broker by the real estate salesperson, an application to the department for a transfer of license by the real estate salesperson shall be communicated in writing by the department to the real estate broker. As of the date of the communication, the notice shall operate as if a written notice were served by the real estate salesperson upon the real estate broker. The real estate broker, at the time of mailing the real estate salesperson's license to the department, shall address a communication to the last known residence address of the real estate salesperson, which communication shall advise the real estate salesperson that the license has been delivered or mailed to the department. A copy of the communication to the real estate salesperson shall accompany the license when mailed or delivered to the department. A real estate salesperson shall not perform an act regulated by this article either directly or indirectly under authority of the license after the date of the department's receipt of the license from a broker. Another license shall not be issued to a real estate salesperson until the person returns the former pocket card to the department or satisfactorily accounts to the department for the pocket card. Not more than 1 license shall be issued to a real estate salesperson for the same period of time.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 463, Eff. Sept. 1, 1989.

339.2508 Real estate broker's license; entities to which issued; authorized acts; transferability; associate real estate broker's license; requirements to which applicant subject; suspension; issuance of new license.

Sec. 2508. (1) A real estate broker's license may be issued to an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities. A real estate broker's license issued to an individual or a sole proprietorship shall entitle the individual named on the license to perform acts regulated by this article. Subject to subsection (2), a real estate broker's license issued to a partnership, association, corporation, common law trust, or a combination of those

entities shall entitle those individuals designated as principals under section 2505(1) to perform acts regulated by this article. A broker's license issued to a partnership, association, corporation, common law trust, or a combination of those entities is not transferable.

(2) Before performing acts regulated under this article, each principal shall apply for and obtain, and any other individual may apply for and obtain, an associate real estate broker's license. An applicant for an associate real estate broker's license shall be subject to the same requirements as an applicant for a real estate broker's license. An associate real estate broker's license shall only be issued to individuals.

(3) The associate real estate broker's license of a principal who ceases to be connected with a partnership, association, corporation, common law trust, or a combination of those entities shall be suspended automatically.

(4) An associate real estate broker's license issued to a principal is not transferable. An associate real estate broker's license issued to a nonprincipal may be transferred in the same manner as provided in section 2507 for the transfer of a real estate salesperson's license.

(5) Upon the revocation of a real estate broker's license, the licenses of all real estate salespersons employed by the real estate broker and all affiliated associate real estate brokers shall automatically be suspended, pending a change of employer and the issuance of a new license. A new license shall be issued without charge, if the license is issued during the same term in which the original license was issued.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988.

339.2509 Associate real estate broker's license; issuance to principal and nonprincipal; limitation; definitions.

Sec. 2509. (1) A principal may be issued more than 1 associate real estate broker's license.

(2) A nonprincipal shall not be issued more than 1 associate real estate broker's license as a nonprincipal, but may hold 1 or more associate real estate broker's licenses as a principal.

(3) As used in this section and section 2508:

(a) "Nonprincipal" means an individual who is licensed as an associate real estate broker, but has not been designated as a principal under section 2505(1).

(b) "Principal" means an individual designated as a principal under section 2505(1).

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1988, Act 16, Imd. Eff. Feb. 18, 1988.

339.2510 Real estate salesperson; commission or valuable consideration.

Sec. 2510. A real estate salesperson shall not accept from a person other than the real estate salesperson's employer a commission or valuable consideration for the performance of an act specified in this article.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2511 Plan or scheme for selling or promoting sale of real estate; game promotion; promotional sales of property located outside state.

Sec. 2511. (1) A plan or scheme involving a lottery, contest, game, prize, or drawing shall not be used by a real estate broker or real estate salesperson for the sale or promotion of a sale of real estate. However, a game promotion as defined in and in compliance with section 372a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.372a of the Michigan Compiled Laws, may be used by a real

estate broker or real estate salesperson for any purpose other than the direct promotion of a specific piece of real estate.

(2) A real estate broker who proposes to engage in sales of a promotional nature in this state of property located outside of this state, shall submit to the department a full description of the property and the proposed terms of sale, and the real estate broker and the real estate broker's real estate salespersons shall comply with rules, restrictions, and conditions pertaining to the sale as imposed by the department. An expense incurred by the department investigating the property and the proposed sale of the property in this state, shall be borne by the real estate broker. A real estate broker or real estate salesperson shall not refer to the corporation and securities commission of this state, or to an officer or employee of the commission, in selling, offering for sale, advertising, or otherwise promoting the sale, mortgage, or lease of property, or shall not make a representation that the property has been inspected or approved or otherwise passed upon by the department, or by a state official, department, or employee.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1990, Act 164, Imd. Eff. July 2, 1990.

339.2512 Prohibited conduct; penalties.

Sec. 2512. A licensee who commits 1 or more of the following is subject to the penalties set forth in article 6:

- (a) Except in a case involving property management, acts for more than 1 party in a transaction without the knowledge of the parties.
- (b) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in section 2517.
- (c) Represents or attempts to represent a real estate broker other than the employer without the express knowledge and consent of the employer.
- (d) Fails to account for or to remit money coming into the licensee's possession which belongs to others.
- (e) Changes a business location without notification to the department.
- (f) In the case of a real estate broker, fails to return a real estate salesperson's license within 5 days as provided in section 2507.
- (g) In the case of a licensee engaged in property management, violates section 2512c(2), (5), or (6).
- (h) Except as provided in section 2512b, sharing or paying a fee, commission, or valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.
- (i) Conducts or develops a market analysis not in compliance with the requirements imposed in section 2601(a)(ii).
- (j) Except in the case of property management accounts, fails to deposit in the real estate broker's custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:
 - (j) A real estate broker shall retain a deposit or other money made payable to a person, partnership, corporation, or association holding a real estate broker's license

under this article pending consummation or termination of the transaction involved and shall account for the full amount of the money at the time of the consummation or termination of the transaction.

(ii) A real estate salesperson shall pay over to the real estate broker, upon receipt, a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.

(iii) A real estate broker shall not permit an advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with funds on deposit belonging to the real estate broker.

(iv) A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money belonging to others made payable to the real estate broker in a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.

(v) A real estate broker shall keep records of funds deposited in its custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A real estate broker's separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall provide for withdrawal of funds without previous notice. This article and the rules promulgated pursuant to this article do not prohibit the deposit of money accepted under this act in a non-interest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.

(vi) If a purchase agreement signed by a seller and purchaser provides that a deposit be held by an escrowee other than a real estate broker, a licensee in possession of such a deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee has received notice that an offer to purchase is accepted by all parties.

History: 1980 Act 299, Immediate Eff. Oct. 21, 1980; Amended 1993 Act 93, Immediate Eff. July 13, 1993; Amended 1993 Act 177, Immediate Eff. Sept. 29, 1993; Amended 1994 Act 125, Immediate Eff. May 16, 1994; Amended 1994 Act 333, Immediate Eff. Oct. 18, 1994; Amended 1996 Act 430, Effective January 1, 1997; Amended 2001 Act 436, Effective. January 9, 2001; Amended 2002 Act 42, Immediate Eff. March 12, 2002.

339.2512a Action for collection of compensation for performance of act or contract; allegation and proof.

Sec. 2512a. A person engaged in the business of, or acting in the capacity of, a person required to be licensed under this article, shall not maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article at the time of the performance of the act or contract.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2512b Actions not constituting participation in real estate transaction or in payment of real estate commissions.

Sec. 2512b. The following actions do not constitute participation in a real estate

transaction or in the payment of real estate commissions:

(a) As an owner or an authorized agent of the owner, offering an existing tenant of the owner's property a consideration of a value of 1/2 month's rent or less for referring a prospective tenant to the owner or the authorized agent of the owner for the purpose of entering into a lease agreement.

(b) As an existing tenant of rental property, accepting a consideration of 1/2 month's rent or less for the referral of prospective tenants.

History: Add. 1981, Act 83, Imd. Eff. July 1, 1981.

339.2512c Property management performed by real estate broker.

Sec. 2512c. (1) Except as otherwise provided in this section, all property management duties, responsibilities, and activities performed by a real estate broker and his or her agent engaged in property management shall be governed by and performed in accordance with a property management employment contract.

(2) A real estate broker who engages in property management shall maintain property management accounts separate from all other accounts. Except as provided in this section, a property management account shall be managed in accordance with the property management employment contract.

(3) A property management account may be an interest-bearing account or instrument, unless the property management employment contract provides to the contrary. The interest earned on a property management account shall be handled in accordance with the property management employment contract.

(4) A real estate broker or any designated employee of the real estate broker engaged in property management may be signatory on drafts or checks drawn on property management accounts.

(5) A person who engages in property management shall maintain records of funds deposited and withdrawn from property management accounts. Property management account records shall indicate the date of the transaction, from whom the money was received or to whom it was given, and other pertinent information concerning the transaction the property management employment contract may require.

(6) A real estate broker engaged in property management shall render an accounting to his or her property management client and remit all money strictly in accordance with the property management employment contract.

(7) All records required to be kept pursuant to this section or pursuant to the property management employment contract shall be subject to inspection by the department.

History: Add. 1994, Act 333, Imd. Eff. Oct. 18, 1994.

339.2513 Filing bond or posting cash deposit as condition precedent to issuance of license or removal of suspension; action by injured person.

Sec. 2513. If an application for a license is made by a person whose license has been denied, suspended, or revoked as a result of disciplinary action for violation of this article or of the rules promulgated under this article, the department may require as a condition precedent to the issuance of a license to the applicant or the removal of suspension, that the applicant file or have on file with the department a bond for a period not to exceed 5 years, issued by an admitted surety insurer or cash in a sum to be fixed by the department, based upon the magnitude of the operations of the applicant, not to exceed the sum of \$5,000.00 in which this state shall appear as the insured. If the department orders the filing of a bond or the posting of a cash deposit, a person injured by an

unlawful act or omission of the applicant may bring an action in a proper court on the bond or a claim against the cash deposit for the amount of the damage suffered as a result to the extent covered by the bond or cash deposit.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2514 Real estate broker or real estate salesperson; nonresident applicant; consent to service of process; application; disposition of process or pleading.

Sec. 2514. A nonresident of this state may become a real estate broker or a real estate salesperson by conforming to the requirements of this article. A nonresident applicant shall file an irrevocable consent that an action may be commenced against the applicant in the proper court of a county of this state in which a cause of action may arise in which the plaintiff may reside, by the service of process or pleading authorized by the laws of this state on the department, the consent stipulating and agreeing that service of process or pleadings on the department shall be taken and held in court to be as valid and binding as if due service had been made upon the applicant in this state. An instrument containing a consent shall be authenticated by a seal, if a corporation, or by the acknowledged signature of a member or officer of the corporation, if otherwise. An application, except from an individual, shall be accompanied by the certified copy of the resolution of the proper officer or managing board authorizing the proper officer to execute the application. If a process or pleading mentioned in this article is served upon the department it shall be by duplicate copies, 1 of which shall be filed in the department and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleading is directed.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.2515 Listing agreement; discrimination prohibited; burden of proof; legal and equitable remedies.

Sec. 2515. (1) A listing agreement entered into between the broker and seller or lessor of property shall contain language that discrimination because of religion, race, color, national origin, age, sex, disability, familial status, or marital status on the part of the real estate broker, real estate salesperson, seller, or lessor is prohibited.

(2) This article shall not authorize the department to assume any facts not in evidence or compel a party to prove innocence of charges before the charges have been proven by the department. The department shall at all times bear the burden of proof to all charges made against a party.

(3) This article shall not diminish the right of a party to pursue and utilize direct and immediate legal or equitable remedies in a court of competent jurisdiction.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981;--Am. 1993, Act 93, Imd. Eff. July 13, 1993;--Am. 1998, Act 90, Imd. Eff. May 13, 1998.

339.2517 Disclosure of agency relationship.

Sec. 2517. (1) A licensee shall disclose to a potential buyer or seller all types of agency relationships available and the licensee's duties that each agency relationship creates, before the disclosure by the potential buyer or seller to the licensee of any confidential information specific to that potential buyer or seller.

(2) The disclosure of the type of agency relationship shall be in writing and substantially conform to the following:

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

Seller's Agents

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller.

Buyer's Agents

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. Buyer's agents and subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer.

Dual Agents

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller, and the buyer.

Licensee Disclosure (check one)

I hereby disclose that the agency status of the licensee named below is:

_____ Seller's Agent

_____ Buyer's Agent
 _____ Dual Agent
 _____ None of the above

Affiliated Licensee Disclosure (check one)

_____ Only the licensee's broker and a named supervisory broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

_____ All affiliated licensees have the same agency relationship as the licensee named below. Further, this form was provided to the buyer or seller before disclosure of any confidential information.

_____ Licensee	_____ Date
_____ Licensee	_____ Date

Acknowledgment

By signing below, the parties confirm that they have received and read the information in this agency disclosure statement and that this form was provided to them before the disclosure of any confidential information specific to the potential sellers or buyers.

_____ Potential Buyer/Seller (circle one)	_____ Date
_____ Potential Buyer/Seller (circle one)	_____ Date

(3) This article does not prevent a licensee from acting as a transaction coordinator upon proper notice to all parties to a real estate transaction.

(4) A broker and a client may enter into a designated agency agreement. In the absence of a written designated agency agreement, a client is considered to have an agency relationship with the broker and all affiliated licensees.

(5) A designated agency agreement shall contain the name of all associate brokers who are authorized to act as supervisory brokers. If designated agents who are affiliated licensees represent different parties in the same real estate transaction, the broker and all supervisory brokers are considered consensual dual agents for that real estate transaction

Designated agents who are affiliated licensees representing different parties in the same transaction shall notify their clients that their broker represents both buyer and seller before an offer to purchase is made or presented.

(6) Except as otherwise provided in subsection (5), a client with a designated agency agreement is not considered to have an agency relationship with any affiliated licensees of the designated agent. Two designated agents who are affiliated licensees may each represent a different party in the same transaction and shall not be considered dual agents. The designated agent's knowledge of confidential information of a client is not imputed to any affiliated licensee not having an agency relationship with that client.

(7) A designated agent shall not disclose confidential information of a client to any licensee, whether or not an affiliated licensee, except that a designated agent may disclose to any supervisory broker confidential information of a client for purposes of seeking advice or assistance for the benefit of the client. A licensee who represents a client in an agency capacity does not breach any duty or obligation owed to that client by failing to disclose to that client information obtained through a present or prior agency relationship.

(8) A listing agreement or a buyer's agency agreement may be amended to establish a designated agency relationship, to change a designated agent, or to change supervisory brokers at any time pursuant to a written addendum signed by the parties.

(9) As used in this section:

(a) "Affiliated licensees" means individuals licensed as salespersons or associate brokers who are employed by the same broker.

(b) "Buyer" means a purchaser, tenant, or lessee of any legal or equitable interest in real estate.

(c) "Buyer's agent" means a licensee acting on behalf of the buyer in a real estate transaction who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law.

(d) "Designated agent" means an individual salesperson or an associate broker who is designated by the broker as the client's legal agent pursuant to a designated agency agreement.

(e) "Designated agency agreement" means a written agreement between a broker and a client in which an individual salesperson or associate broker affiliated with that broker is named as that client's designated agent.

(f) "Dual agent" means a licensee who is acting as the agent of both the buyer and the seller and provides services to complete a real estate transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.

(g) "Real estate transaction" means the sale or lease of any legal or equitable interest in real estate where the interest in real estate consists of not less than 1 or not more than 4 residential dwelling units or consists of a building site for a residential unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(h) "Seller" means the equitable or legal owner of real estate.

(i) "Seller's agent" means a licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.

(j) "Supervisory broker" means an associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.

(k) "Transaction coordinator" means a licensee who is not acting as the agent of either the buyer or the seller.

History: Add. 1993, Act 93, Eff. Jan. 1, 1994. Amended 2000 Act 236, Effective June 27, 2000. Am. 2001, Act 436, Eff. January 9, 2001.

339.2518 Prohibited actions.

Sec. 2518. An action shall not be brought against a real estate broker, an associate broker, or a real estate salesperson under the following circumstances:

(a) For failure to disclose to a purchaser or lessee of real property that a former occupant has or is suspected of having a disability as that term is defined and interpreted under, and disclosure of which would constitute unlawful discrimination under, sections 804, 805, 806, or 817 of the fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 42 U.S.C. 3604, 3605, 3606, and 3617.

(b) For failure to disclose to a purchaser or lessee of real property that the real property was or was suspected to have been the site of a homicide, suicide, or other occurrence prohibited by law which had no material effect on the condition of the real property or improvements located on the real property.

(c) For failure to disclose any information from the compilation that is provided or made available under section 8(2) of the sex offenders registration act, 1994 PA 295, MCL 28.728.

History: Add. 1993, Act 93, Imd. Eff. July 13, 1993;—Am. 1998, Act 90, Imd. Eff. May 13, 1998; — Am. 1998, Act 437, Imd. Eff. Dec. 28, 1998.

**ADMINISTRATIVE RULES
REAL ESTATE BROKERS AND SALESPERSONS**

(By authority conferred on the director of the department of consumer and industry services by sections 205, 308, and 2504 of 1980 PA 299, M.C.L. 339.205, 339.208 and 339.2504 and Executive Reorganization Order No. 1996-2, M.C.L. 445.2001)

PART 1. GENERAL PROVISIONS

R 339.22101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Approved as determined by the department" or "approval as determined by the department" means review and approval by the department or review by a statewide real estate related trade association designated by the department pursuant to section 210 of the code, recommendation by the statewide real estate related trade association to the department, and final approval by the department.

(b) "Association" as referred to in section 2505 (1) of the code includes a limited liability company.

(c) "Classroom" means either:

(i) A physical location where educational courses are offered and students and instructor are present.

(ii) A location where a student receives instruction through electronic means.

(d) "Clock hour" means a period of not fewer than 50 minutes of actual classroom instruction, not including outside assignments and reading. For distance learning systems, "clock hour" means the amount of material a student can process in 50 minutes of computerized instruction.

(e) "Code" means 1980 P.A. 299, MCL 339.101 et seq.

(f) "Continuing education course" means a course that is represented as fulfilling the requirements of section 2504 (4) of the code.

(g) "Coordinator" means the individual who assumes the responsibility under these rules for offering approved courses.

(h) "Credit hour" means not fewer than 10 clock hours of approved educational courses.

(i) "Distance learning" means either of the following:

(i) Approved courses where instructor and student may be apart and instruction takes place through other media.

(ii) Approved courses which include but are not limited to instruction presented through interactive classrooms, computer conferencing, and interactive computer systems and which fulfill the requirements of section 2504 (4) of the code.

(j) "Directly" means in a direct way marked by the absence of any intervention, instrumentality, or influence; not concealed or disguised.

(k) "Electronic communication" means a communication created, stored, generated, received, or transmitted by electronic means in a format that allows text to be visually displayed or printed.

(l) "Indirectly" means not resulting or occurring directly from obvious means or cause; remotely connected concealed, or disguised.

(m) "Instructor" means an individual who assumes responsibility under these rules for

instructing an approved course. Instructors shall possess at least 1 of the following minimum qualifications:

- (i) Be an instructor of real estate courses who is or has been engaged in the practice of teaching at an accredited institution of higher learning.
- (ii) Be a person properly licensed or certified by the department or other governmental agency who is engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects.
- (iii) Be a person who possesses alternative qualifications approved by the department, and is qualified by experience, education, or both, to supervise and instruct a course of study.
- (n) "Licensee" means a person who is licensed under article 25 of the code.
- (o) "Non-principal associate broker" referenced in section 2508 (4) and 2509 (3) of the code, means an individual who is not a sole proprietor, an officer or equity owner, a member, manager, or general partner, in the association, partnership, corporation, or other entity authorized by the state of Michigan under which the business is organized.
- (p) "Principal associate broker", referenced in sections 2508 and 2509 of the code, means an individual who is a sole proprietor, member, manager, general partner, equity owner, or officer of the corporation, association, general partnership, or other entity authorized by the state of Michigan under which the business is organized.
- (q) "Prelicensure real estate course" or "prelicensure course" means a course that is represented to the public as fulfilling, in whole or in part, the requirements of section 2504 (l) and (2) of the code.
- (r) "Real estate school" or "institution" means an approved entity which represents to the public that any of its courses fulfill, in whole or in part, the requirements of section 2504 (l) and (2) of the code for prelicensure education. The entity shall also meet the requirements as set forth in section 2504 (8) of the code.
- (s) "Service provision agreement" means an agreement between the broker and client which establishes an agency relationship through a listing agreement or a buyer agency agreement.
- (t) "Sponsor" means a person, as defined in section 105 (5) of the code, and approved as determined by the department, which represents to the public that any of its courses fulfill the requirements of section 2504 (4) of the code for continuing education.
- (u) "Student" means a member of the public or a licensee who is attending an approved course designed to fulfill the requirements of section 2504 of the code.
- (v) "Supervision" as defined in R 339.22310, means the overseeing of, or participation in, the work of another licensed individual by a broker or associate broker.
- (w) "Transfer" means a process used by a salesperson or non-principal associate broker to apply for and receive a license issued to a different employing broker.

(2) Terms defined in sections 103, 105, and 2501 of the code have the same meanings when used in these rules.

History: 1991 MR 4, Eff. May 1, 1991; 1997 MR 7, Eff. Aug. 5, 1997. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22103 Board meetings.

Rule 103. Board meetings are held in accordance with 1976 P.A. 267, MCL 15.261

et seq., and are open to the public.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22199 Rescission.

Rule 199. R 338.2601 to R 338.2619, R 338.2701, R 338.2703, and R 338.2721 to R 338.2786 of the Michigan Administrative Code, appearing on pages 2569 to 2585 of the 1979 Michigan Administrative Code, are rescinded.

History: 1991 MR 4, Effective. May 1, 1991.

PART 2. LICENSING

R 339.22201 Application; eligibility.

Rule 201. (1) A license shall not be issued to an individual who is less than 18 years old.

(2) A broker license shall be issued to a legal entity only if the individual who holds the broker license is identified on the application as 1 of the following:

- (a) A sole proprietor.
- (b) A partner in the partnership.
- (c) A partner in a limited partnership.
- (d) An officer for the corporation.
- (e) A member or manager for the association.
- (f) A holder of a responsible position of authority in any other legal entity authorized by the state of Michigan under which the business is organized.
- (3) Associate broker and salesperson licenses shall only be issued to individuals.
- (4) Associate brokers shall have met the requirements for broker licensure.
- (5) The department may require an applicant to submit a report from an independent source pertaining to his or her previous occupation, criminal record, or any other information material to the applicant's qualifications for licensure.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22203 Validity of broker education.

Rule 203. (1) An applicant for a broker or associate broker license shall have completed 90 clock hours of qualifying prelicensure education, of which 9 clock hours shall be on civil rights law and fair housing law, as defined in section 2504 (1) of the code. The broker pre-licensure education shall be completed not more than 36 months before the date of application, unless the applicant has held a license as a salesperson for that intervening period.

(2) Acceptable courses for pre-licensure education shall meet criteria established by the department, but may be reviewed and pre-approved by a statewide real estate trade association for subject matter relevant to the practice of real estate. Not more than 1 broker course on the same subject will be accepted for credit.

(3) In meeting the broker prelicensure education requirements, credit shall be given for either of the following:

- (a) Possession of a law degree, obtained at any time before the date of application, shall be equated to 60 clock hours of real estate education which includes 6 clock hours of instruction in civil rights law and fair housing law.

(b) Possession of a master's degree in business administration from an accredited institution of higher learning shall be equated to 60 clock hours of real estate education. History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22205 Acceptable related experience for broker applicants.

Rule 205. (1) For purposes of calculating the time during which an applicant for a license as a broker or associate broker has been engaged in the real estate business as required by section 2505(5) of the code, the following credit shall be granted by the department:

(a) Real estate salesperson or broker: One year of credit for each 12-month period of licensure in which 6 or more real estate transactions, as defined in section 2501(b) of the code, are verified.

(b) Builder: One year of credit for each 12-month period in which 6 residential units, or 6 commercial units, or 6 industrial units, or a combination thereof, were built and personally sold or leased by the applicant.

(c) Investor: Six months of credit for each 6 real property transactions personally negotiated for a purchase or sale by the applicant for his or her own account with a maximum of 1 year of credit allowed. However, credit shall not be granted if the applicant has more than 6 sales in any 12-month period in violation of the provisions of R 339.22319.

(d) Land or condominium developers: One year of credit for each 2 developments or subdivisions containing not fewer than 10 units or parcels which the applicant has bought, subdivided, and improved for sale as lots or dwellings.

(e) Attorneys: One year of experience for each year in which 6 real estate transactions were conducted as an attorney.

(f) Related occupations: One year of credit for each period equivalent to 40 hours per week, 48 weeks per year, in which the applicant has worked in a capacity directly related to the acquisition, financing, or conveyance of real estate, or positions in which the applicant has been directly involved in real estate business including serving as the decision-making authority in any of the following positions:

(i) A loan or trust officer of a federal or state-regulated depository institution.

(ii) A loan or trust officer of a mortgage company.

(iii) A real estate officer of a corporation which is not a licensed real estate broker.

(iv) A title insurance company officer engaged in the closing of escrow accounts and real estate closings.

(v) A staff or real property appraiser.

(2) Where state law requires a person to be licensed to perform an activity, credit shall not be granted for experience obtained without proper licensure.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

[Compiler's Note: Rule 205 (1) (a) references section 2501 (b) of the statute. However, Section 2501 was reordered in 1994 when Article 25 of the Code was amended to add "property management", defined in 2501(a) and (b). The "transactions" referred to in Rule 205 (1) (a) are now defined in Section 2501 (d) of Article 25.]

R 339.22207 Examinations.

Rule 207. (1) A written examination is required of all applicants, except as noted in this subrule. Exceptions to the written examination requirements may be granted to any

of the following:

(a) An applicant who qualifies under the Americans with disabilities act, PL 101-336, 42 U.S.C. sections 12101 et seq., may request reasonable accommodations to take the exam.

(b) An applicant for a license who, within the last 3 years, has held a license as a salesperson, broker, or associate broker.

(c) An applicant for a broker or associate broker license who, after surrendering a broker or associate broker license, has been continuously licensed as a salesperson since the surrender.

(2) A passing score on an examination, or on a portion of an examination if the examination is given in separate parts, shall be valid for 1 year from the date of examination.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22209 Conversion and transfer of license.

Rule 209. (1) A broker or associate broker license shall not be converted into a salesperson license, and a salesperson license shall not be converted into a broker or associate broker license.

(2) A salesperson shall be licensed to a broker and shall not be licensed to more than 1 broker at the same time. A salesperson shall not be licensed as a broker or associate broker while he or she holds a salesperson license.

(3) To be licensed to another broker as a salesperson, a broker or associate broker shall surrender his or her broker or associate broker licenses and apply for a salesperson license. To return to being a broker or associate broker, the salesperson shall surrender his or her salesperson license and apply for the broker or associate broker license.

(4) An individual broker license is not transferable to a corporation, partnership, association, common law trust, or a combination of such entities, and the broker license of a corporation, partnership, association, common law trust, or a combination of such entities is not transferable to an individual. A broker license is not transferable. The license of a principal associate broker is not transferable. The license of a

nonprincipal associate broker or a salesperson is transferable in accordance with section 2508 (4) of the code and R 339.22101 and R 339.22211.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22211 Transfer of salespersons or nonprincipal associate brokers' license; transfer of pocket card and wall license.

Rule 211. (1) An applicant for a salesperson or nonprincipal associate broker license who desires to transfer to a different employing broker before the issuance of the original license shall file a new application for licensure.

(2) A salesperson or nonprincipal associate broker shall submit a signed statement to the department that he or she has obtained the dated signature and license number of his or her new broker on the reverse side of the pocket card.

(3) Upon receipt of the completed application for transfer to a new broker, the proper fees, and the old license, the department shall consider the pocket card proper evidence of licensing for 45 days from the latest date written on the back of the card. If the applicant is notified that the application is incomplete, or the broker to whom he or she is

transferring is not licensed, the pocket card shall no longer be valid and the applicant shall wait until the new broker receives the wall license and pocket card before engaging in regulated activities.

(4) The ability to conduct regulated activities using the signed and dated pocket card may continue only if a salesperson transfer or new associate broker application is received within 45 days from the date on the pocket card.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22213 License renewal; late renewal.

Rule 213. (1) An applicant for renewal of a license may continue to operate as previously licensed, using the expired wall license and pocket card as evidence of proper licensing, if the applicant has met both of the following conditions by the expiration date:

- (a) Submitted a complete application for renewal and the required fee.
- (b) Completed the required continuing education.

(2) An applicant for renewal whose application is received by the department after the expiration date shall not operate until the applicant's employing broker receives his or her new license and pocket card.

(3) A person who fails to renew a license within 60 days of expiration, shall apply for relicensure in accordance with Sections 2504 (5) and 411 (4) of the code.

(4) Completion of continuing education for relicensure shall not qualify as completion of the continuing education requirement for the next license renewal.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22215 Application for new license after revocation of previous license.

Rule 215. A person whose license has been revoked shall not apply for a new license for at least 3 years after the service of the final order. To be considered for a license following a revocation, an applicant shall meet all educational and examination requirements in effect at the time of application. Credit for education, examinations, or experience obtained before the revocation shall not be granted.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

PART 3. PRACTICE AND CONDUCT

R 339.22301 Assumed names.

Rule 301. (1) A broker shall not conduct business or advertise under a name other than that in which the license is issued.

(2) An individual broker or a partnership desiring to operate under an assumed name shall send to the department, with the application for a broker license, a copy of the certificate of assumed name which is certified by the clerk of the county where the certificate is on file. A broker applicant who is a legal entity shall submit a certificate of assumed name with the application certified by the proper state authority.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22305 Service provision agreement.

Rule 305. (1) A broker or a licensee acting on behalf of the employing broker who enters into a service provision agreement with a party or parties shall provide, at the time of signing, a true executed copy of the agreement to the party or parties signing the agreement. Every agreement shall be fully completed by the licensee before the party or

parties sign it.

(2) A service provision agreement shall include a definite expiration date and shall not contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement upon or after the expiration date.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22307 Delivery of offer to purchase to buyer; delivery of written offers to seller; delivery of copies of acceptance to buyer and seller; inclusion of terms and conditions in offer to purchase.

Rule 307. (1) A licensee shall deliver to the buyer a signed copy of the offer to purchase immediately after it has been signed by the buyer.

(2) A licensee shall promptly deliver all written offers to purchase to the seller upon receipt. Acceptable methods of delivery include, but are not limited to, either of the following:

(a) Delivery in person or by mail.

(b) Delivery by electronic communication as defined in 2000 P.A. 305, MCL 450.831 et seq. The use of electronic records or digital signatures for any real estate transactions requires the prior agreement of the parties.

(3) Upon obtaining a proper acceptance of the offer to purchase, signed by the seller, the licensee shall promptly deliver true executed copies of the acceptance to the purchaser and seller.

(4) A licensee shall make certain that all terms and conditions of the real estate transaction are included in the offer to purchase.

(5) A licensee shall not be subject to disciplinary action for failing to submit to the seller any additional offers to purchase which are received after the seller has accepted an offer and the sales agreement is fully executed, unless a service provision agreement requires that subsequent offers be presented.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22309 Licensee's recommendation to purchaser.

Rule 309. A licensee who is involved at the time of execution of an offer to purchase in a real estate transaction shall recommend to the purchaser that a fee title policy in the amount of the purchase price be furnished to the purchaser by the seller, issued or certified to the approximate date of the closing of the real estate transaction.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002

R 339.22310 Supervision.

Rule 310. A broker or associate broker shall supervise the work of a licensee. Supervision shall include, at a minimum, all of the following:

(a) Direct communication in person or by radio, telephone, or electronic communication on a regular basis.

(b) Review of the practice of the supervised licensee.

(c) Review of the supervised licensee's reports.

(d) Analyses and guidance of the licensee's performance in regulated activities.

(e) Provision of written operating policies and procedures.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22311 Closing transactions.

Rule 311. (1) The broker or associate broker who is involved at the closing of a real estate or business opportunity transaction shall furnish, or cause to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party. If the closing is conducted at a regulated depository institution, a title company, or other closing entity, the broker or associate broker is still responsible for the content of the closing statement and shall sign the final closing document.

(2) A salesperson shall not close a real estate or business opportunity transaction unless under the supervision of the broker to whom the salesperson is licensed. The broker or associate broker shall assume full responsibility for execution of the closing statements prepared by the salesperson or other persons acting under the broker's or associate broker's direct supervision.

(3) Without written approval of the seller and buyer, a licensee shall not close a transaction contrary to terms or conditions of an executed agreement.

(4) In a cooperative transaction, either the broker or the associate broker may close the sale and furnish closing statements; however, it is the final responsibility of the listing broker or associate broker to close the sale and furnish signed closing statements to both the buyer and seller.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22313 Trust accounts.

Rule 313. (1) Trust or escrow accounts shall be maintained in demand accounts only. Checks drawn on the trust or escrow accounts shall be signed by a broker or an associate broker. Cosignatories may be used; however, the signature of a broker or associate broker shall accompany this signature.

(2) A broker shall maintain a non-interest-bearing demand trust account when any earnest money deposits or money belonging to others comes into his or her possession. The account shall be maintained in accordance with the requirements of section 2512 (j) of the code.

(3) A broker may maintain more than 1 trust account. A broker may maintain the broker's own funds in an account that is not more than \$500 in each trust account to cover bank service charges and bank minimum balance requirements or to avoid the account being closed when there are no other funds in the account. The funds shall be accounted for in a bookkeeping system as described in subrule (4) of this rule.

(4) A broker shall maintain a bookkeeping system in the office. At a minimum, the system shall consist of both of the following:

(a) A record which shows the chronological sequence in which funds are received and disbursed, as follows:

(i) For funds received, the record shall include all of the following information:

- (A) The date and receipt of deposit.
- (B) The name of the party who provided the funds to the broker.
- (C) The name of the seller.
- (D) The amount of the funds.

(ii) For funds disbursed, the record shall include all of the following information:

- (A) The date of the disbursement.
- (B) The payee.
- (C) The check number.
- (D) The purpose of the disbursement.
- (E) The amount of the disbursement.

(iii) A current balance of the account or accounts shall be maintained and be available to the department upon request.

(b) A record which shows receipts and disbursements as they affect a single, particular transaction between a buyer and seller. The record shall segregate 1 transaction from another transaction as follows:

(i) For funds received, the record shall include all of the following information:

- (A) The names of both parties to a transaction.
- (B) The property address or brief legal description.
- (C) The dates and amounts received.

(ii) For funds disbursed, the record shall include all of the following information:

- (A) The date.
- (B) The payee.
- (C) The check number.
- (D) The amount of the disbursement.

(5) All trust or escrow account records shall be maintained for a period of not less than 3 years from the date of inception of the records.

(6) Disbursement of an earnest money deposit shall be made at consummation or termination of the agreement in accordance with the agreement signed by the parties. However, any deposit in the trust account of the broker for which the buyer and seller have made claim shall remain in the broker's trust account until a civil action has determined to whom the deposit must be paid, or until the buyer and seller have agreed, in writing, to the disposition of the deposit. The broker may also commence a civil action to interplead the deposit with the proper court.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22315 Licensee buying or acquiring interest in property; intent.

Rule 315. (1) When buying or acquiring, directly or indirectly, an interest in a property, a licensee shall disclose the fact of his or her licensure as a real estate broker, associate broker, or salesperson clearly, in writing, to the owner before the owner is asked to sign the purchase agreement.

(2) When a licensee acquires, directly or indirectly, an option to purchase a particular property from an owner who requested the licensee's services as a real estate licensee, the licensee shall disclose the fact of his or her licensure as a real estate broker, associate broker, or salesperson, in writing, to the owner before the owner is asked to sign the option agreement.

(3) A licensee shall not become a party to a net service provision agreement for an owner, seller, or buyer as a means of securing a real estate commission.

(4) A licensee shall provide written proof of any required disclosures upon request of the department.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22317 Licensee buying or acquiring interest in property; commission; consent by seller.

Rule 317. A licensee who buys or acquires an interest in property, directly or indirectly, and who is due a commission, fee, or other valuable consideration as a result of the sale shall comply with all of the following provisions before compensation is received:

(a) Disclose, in writing, to the seller or owner that the licensee will be compensated for the sale.

(b) Obtain the written permission from the seller or owner to receive the specified consideration.

(c) Provide written proof of compliance upon request by the department..

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22319 Licensure required for owner of real estate engaging in sale as principal vocation; acts constituting principal vocation; sale of real estate owned by broker or associate broker; licensee to reveal ownership or interest when selling property licensee owns or has interest in.

Rule 319. (1) Licensure as a real estate broker is required of an owner of real estate who engages in the sale of real estate as a principal vocation, unless the owner engages the services of a real estate broker. Acts constituting a principal vocation include any of the following:

(a) Engaging in more than 5 real estate sales in any 12-month period.

(b) Holding one's self out to the public as being principally engaged in the sale of real estate.

(c) Devoting over 50% of one's working time, or more than 15 hours per week in any 6-month period, to the sale of real estate.

(2) A sale of real estate by a real estate salesperson, other than his or her principal residence, shall be deemed to be done as a principal vocation of the salesperson and the sale shall be through a licensed broker.

(3) Sales of real estate owned by, or under option to, a broker or associate broker are subject to the provisions of the code and these rules.

(4) In selling property owned by a licensee or in which a licensee has any interest, the licensee shall reveal the facts of his or her ownership or interest and his or her licensure to the purchaser, in writing, before the offer to purchase is signed. Satisfactory written proof of this disclosure shall be provided by the licensee upon request by the department.

History: 1991 MR 4. Effective May 1, 1991.

R 339.22321 Licensee commissions for other services; disclosure and consent of buyer and seller required.

Rule 321. (1) A licensee who is entitled to receive, either directly or indirectly, a real estate commission as a result of the sale of property, may not also receive a referral fee or other valuable consideration for placing a loan in connection with that transaction unless the licensee obtains the prior written consent of the buyer and seller in that transaction and the fee is not otherwise prohibited by the real estate settlement procedures act of 1974, 12 U.S.C. 2601 et seq., or other applicable law.

(2) A licensee who is entitled to receive, either directly or indirectly, a real estate commission as a result of the sale of property, may not also receive a referral fee or other valuable consideration from an abstract, home warranty, title insurance, or other settlement service provider in connection with that transaction unless the licensee obtains the prior written consent of the party or parties with whom the licensee has an agency relationship and the fee is not otherwise prohibited by the real estate settlement procedures act of 1974, 12 U.S.C. 2601 et seq., or other applicable law.

History: 1991 MR 4, Eff. May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22323 Broker's place of business; location; branch office license; supervision and management of branch office.

Rule 323. (1) A broker shall maintain a place of business in this state which is an actual and established physical location from which the broker can and does conduct the

broker's business and where the broker's books and records are maintained.

(2) A license for a branch office is required for any location in addition to the principal business location which, by advertising or signs or otherwise, is held out to the public as a place where clients or customers may do business or consult with a licensee.

(3) An individual broker, associate broker, or an associate broker who manages a branch office shall be reasonably available to supervise and to manage the business during regular business hours, in accordance with section 2505 (3) of the code.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22325 Contract with licensee abrogating broker's authority to supervise licensee prohibited.

Rule 325. A broker shall not contract with an individual salesperson or non-principal associate broker who is licensed to the broker so as to lose the authority to supervise the licensee.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22327 Display of broker license; pocket card.

Rule 327. (1) A broker shall display the broker's license and the licenses of all salespersons and associate brokers who are licensed to that broker in a conspicuous position in the broker's place of business that is obvious to the public.

(2) A broker, associate broker, or salesperson shall not serve in such capacity without having received his or her license and pocket card or a temporary license. A licensee shall not render services without having, on his or her person, a pocket card or temporary license issued by the department.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22329 Advertising generally; advertising of property owned by brokers; advertising by salespersons; advertising of property owned by salespersons.

Rule 329. (1) Except as provided in subrule (2) of this rule, all advertisements to buy, sell, exchange, rent, lease, or mortgage real estate or business opportunities by a broker shall include the broker's name as licensed and telephone number or street address. All advertising shall indicate affirmatively that the party advertising is a real estate broker.

(2) An individual licensed as a broker or associate broker may advertise personally owned property for sale or for lease in his or her own name, and need not use the name of the broker as licensed. However, the advertising shall indicate affirmatively that the party advertising is a licensed broker or associate broker.

(3) Except as provided in subrule (4) of this rule, advertising by a salesperson or an associate broker shall be under the supervision of, and in the licensed name of, the individual's broker.

(4) A salesperson may only advertise to sell property under his or her own name if the property is the principal residence of the salesperson. A salesperson may only advertise property for rent or lease under his or her own name if the salesperson is the owner of the property.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22333 Misrepresentation of material facts prohibited; disclosure of material facts.

Rule 333. (1) A licensee shall not, directly or indirectly, misrepresent material facts.

(2) A licensee's full disclosure to a buyer or seller of material facts within his or her knowledge about the condition of the real estate offered shall not be grounds for disciplinary action, despite a claim by the buyer or seller that the disclosure constituted disloyalty to the buyer or seller in violation of an agency relationship.

History: 1991 MR 4, Effective May 1, 1991 Amended 2002, MR 16. Effective September 1, 2002.

R 339.22335 Rescinded.

History: 1991 MR 4, Eff. May 1, 1991; rescinded 1977 MR 7, Eff. Aug. 5, 1997.

R 339.22337 Failure of listing broker to cooperate with other brokers.

Rule 337. Failure of the listing broker to cooperate with other brokers is not, in itself, a violation of law or these rules, unless the broker has indicated or implied to the buyer or seller that the broker would cooperate with other brokers.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22339 Payments by brokers following termination of licensed relationship.

Rule 339. If an individual earned commissions or other income while licensed to a broker, it shall not be grounds for disciplinary action as a violation of section 2512 of the code for the broker to pay such earned commissions or income to that individual, regardless of whether that individual is now licensed to another broker or is no longer licensed under the code.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

PART 4. ENFORCEMENT

R 339.22401 Production by licensee of documents or records.

Rule 401. A licensee shall provide for inspection by an authorized representative of the department any document or record as may be reasonably necessary for investigation or audit in the enforcement of the code and these rules.

History: 1991 MR 4, Effective May 1, 1991. Amended 2001, MR 16. Effective September 1, 2002.

R 339.22403 Rescinded.

History: 1991 MR 4, Eff. May 1, 1991; Rescinded 1997 MR 7. Effective August 5, 1997.

R 339.22405 Suspension or revocation of licenses; forwarding of pocket cards and licenses to department.

Rule 405. A salesperson or associate broker, upon notice of suspension or revocation of his or her license, shall immediately forward his or her pocket card, and the broker to whom the individual was licensed shall immediately forward the salesperson's or associate broker's license, to the department. If the suspended or revoked license is that of a broker or the associate broker who is the sole associate broker for a partnership, corporation, association, common law trust, or a combination of such entities, the broker or associate broker shall forward to the department his or her license and pocket card, the licenses and pocket cards of all salespersons, except as provided in R 339.22211(2), and nonprincipal associate brokers issued under the broker, and all the branch office licenses.

History: 1991 MR 4, Effective May 1, 1991.

PART 5. OUT-OF-STATE LAND SALES

R 339.22501 Definitions.

Rule 501. As used in this part:

(a) "Advertising" means a pamphlet, circular, form letter, fact sheet, sign, radio, television, telephone presentation or other script, newspaper or magazine advertisement, or other sales literature or advertising communication addressed to or intended for distribution to potential subscribers or purchasers, including any other inducement.

(b) "Engage in sales" means to sell, lease, option, or assign or to promote sales, leases, options, or assignments. The phrase also means any offer or solicitation of an offer to sell, lease, option, or assign.

(c) "Promotional nature" means engaging in sales of more than 25 lots, units, interests, or parcels by use of a common promotional plan.

(d) "Property" means improved and unimproved real estate; improvements thereon, including time share, interval ownership, or right-to-use agreements located outside the State of Michigan; and any interest in the improved or unimproved real estate.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22503 Broker compliance with code and rules required.

Rule 503. Brokers who intend to engage in sales of a promotional nature of property requiring prior approval of the department pursuant to section 2511 of the code shall comply with the code and these rules.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22505 Broker disclosure of physical characteristics of property.

Rule 505. The broker shall disclose fully and accurately to prospective purchasers the physical characteristics of the property offered, including any unusual or material circumstances or features affecting the property.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22507 Submittal of particulars of property.

Rule 507. A broker shall submit to the department full particulars of the property, on forms provided by the department, which shall include all of the following information:

(a) The name and principal address of the broker.

(b) The name and principal address of the seller.

(c) A general description of the property, stating the number of lots, parcels, units, or interests in the offering.

(d) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the property and each lot, unit, parcel, or interest, and a statement of all existing taxes and existing or proposed special assessments which affect the property.

(e) A statement of the use for which the property is offered.

(f) Information concerning existing or proposed improvements, including streets, water supply levels, drainage control systems, irrigation systems, sewage disposal systems, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements

which are referred to in connection with the offering or disposition of any lot, unit, parcel, or interest in property.

(g) A narrative description of the promotional plan for the sale of the property, together with all advertising to be used.

(h) A legal description of, based on a survey by a professional land surveyor, the total area included in the property, and a statement of the topography thereof, together with a map showing the division proposed or made; the dimensions of the lots, parcels, units, or interests; and the relation of the property to existing streets, roads, and off-site improvements.

(i) A statement as to all of the following:

(i) The present condition of access to the property.

(ii) The availability on the property of sewage disposal facilities and other public utilities, including water, electricity, gas, and telephone facilities.

(iii) The proximity, in miles, of the property to nearby municipalities.

(iv) The nature of any improvements to be installed, by whom they are to be installed and paid for, and an estimated schedule for completion, together with a statement as to the provisions for improvement maintenance.

(j) Such additional information as may be required by the department to assure full and fair disclosure to prospective purchasers.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22509 Provision of copies of sales instruments to department.

Rule 509. The broker shall furnish to the department copies of instruments which will be delivered to a purchaser to evidence his or her interest in the property and of the contracts and other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rents, or leases at which it is proposed to dispose of the lots, units, parcels, or interests in the property.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22511 Submittal of proposed property report to department; form.

Rule 511. The broker shall submit a proposed property report to the department on forms provided by the department.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22513 Property report; review by prospective purchaser; proof of furnishing report.

Rule 513. A broker shall furnish a property report, as required by R 339.22511, to prospective purchasers and afford a reasonable time for its review before a prospective purchaser signs a document by which the purchaser becomes, or expresses an intention to become, obligated to purchase the property offered. A

broker shall produce satisfactory proof of having properly furnished a property report upon demand by the department.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22515 Filing requirements.

Rule 515. (1) For purposes of approval under section 2511 of the code, the broker shall submit a copy of an order of registration pursuant to section 4 or 5 of 1972 P.A. 286, MCL 565.804 or 565.805, of the property to be sold, unless the property is exempt from

such registration by section 4 or 5 of that act.

(2) For those types of property or sales exempted from registration by section 4 or 5 of 1972 P.A. 286, MCL 565.804 or 565.805, the broker shall submit a copy of the filing currently effective with the office of interstate land sales registration pursuant to Public Law 90-448, 15 U.S.C. Sections 1701 to 1720. The submission shall include the order of registration and the property report.

(3) When a broker engages in sales or the promotion of sales of condominiums exempt by section 4 or 5 of 1972 P.A. 286, MCL 565.804 or 565.805, the department may accept a submission of the filing and order from the situs state under an act regulating condominiums as evidence that the broker has satisfied the requirements of R 339.22507.

(4) When the broker engages in the sale of timeshare or membership interests, and all sales are conducted in the situs state, the department may accept a submission of the filing and order from the situs state showing approval has been granted. The submission may be evidence that the broker has satisfied the requirement of R 339.22507.

(5) For out-of-state property offered through a Michigan broker in the state of Michigan, the application for approval shall contain all information as specified in R 339.22501 through R 339.22513.

(6) For purposes of approval under section 2511 of the code, an application and fee for approval from a Michigan licensed broker shall accompany all out-of-state property registrations, including those submissions that have been approved under 1972 P.A. 286, MCL 565.801 et seq.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22517 Investigation of applications; on-site inspections.

Rule 517. Upon receipt of a broker's application for approval, the department shall investigate the matters contained therein and may make on-site inspections of the property the broker intends to offer.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22519 Investigation expenses other than on-site inspection expenses; Deposit of estimated expenses for on-site inspection.

Rule 519. A broker shall pay the department a fee of \$500.00 to cover investigation expenses when submitting the application for department approval. The fee does not include the cost of an on-site inspection.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22521 Deposit of estimated expenses for on-site inspection.

Rule 521. Where an on-site inspection of the property is deemed necessary by the department, the broker shall deposit with the department estimated expenses for the inspection of the property in an amount set by the department.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22523 Approval to engage in sales of promotional nature; form; duration.

Rule 523. (1) The approval of brokers to engage in sales of a promotional nature pursuant to section 2511 of the code shall be in the form of an order and shall be effective for 1 year from the date of issuance.

(2) A broker shall annually renew the order of approval to engage in sales of a promotional nature, pursuant to section 2511 of the code, and shall bear the costs incurred by the department in investigating the application.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22525 Rescinded.

History: 1991 MR 4, Eff. May 1, 1991. Rescinded 2002, MR 16. Effective September 1, 2002.

R 339.22527 Broker holding order of approval to engage in sales of promotional nature; notice of changes.

Rule 527. A broker who holds an order of approval to engage in sales of a promotional nature pursuant to section 2511 of the code shall notify the department immediately of any material change in the information required by R 339.22505 to R 339.22513.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22529 Broker misrepresentation prohibited.

Rule 529. A broker or his or her agent shall not represent to any person that the department has inspected, investigated, or approved the quality, value, or merit of any offering.

History: 1991 MR 4, Effective May 1, 1991.

PART 6. REAL ESTATE EDUCATION

SUBPART 1. GENERAL PROVISIONS

R 339.22601 Course approval; certificate.

Rule 601. (1) A real estate school, sponsor, or educational institution shall apply for and obtain approval as determined by the department for real estate education courses before the courses are offered to the public.

(2) The department shall issue a certificate of course approval or a notice of denial to the school, sponsor, or educational institution within 60 days after the application is received. Denials shall be based on substantive deficiencies and specify the reasons for the denial. If the department does not respond within 60 days, the course shall be deemed approved.

(3) Courses shall be approved as determined by the department. The department will accept the courses for approval which have met the criteria established by the department for course content and number of clock hours and which are taught by instructors who have met the criteria in R 339.22101.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22602 Advertising for approved real estate courses.

Rule 602. All advertising for approved real estate courses that are held out to the public as fulfilling the requirements of section 2504 of the code shall be in the name of the approved school, sponsor, or institution.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22603 Solicitations.

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Rule 603. Organizational membership, employment, or business-related solicitations are prohibited at continuing education courses and prelicensure courses.

History: 1991 MR 4, Eff. May 1, 1991.

R 339.22604 Student records; content; inspection.

Rule 604. (1) Each approved real estate school or institution and each real estate continuing education sponsor shall establish and maintain a record for each student for not less than 3 years from the inception of each record.

(2) Student records shall contain all of the following information:

(a) The student's name and address.

(b) The number of clock hours attended.

(c) The student's grade, if an examination is required to determine successful completion of the course.

(d) The date of course completion.

(3) All records shall be available for inspection during normal business hours by an authorized representative of the department, if the inspection does not violate a law.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22605 Student contracts; return of fees.

Rule 605. (1) If the real estate school, sponsor, or institution uses a student contract, the document shall be provided with the application for approval.

(2) The real estate school, sponsor, or institution shall state on the application for approval the policy regarding the return of fees if a student fails to appear, is dismissed, or withdraws voluntarily from a real estate prelicensure or continuing education course.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22607 Program coordinator.

Rule 607. Each real estate school, institution, or sponsor shall designate 1 individual as coordinator. The coordinator shall be responsible for supervising the program of courses and assuring compliance with the code and these rules.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22609 Instructors.

Rule 609. (1) Each instructor shall be approved as determined by the department before teaching any real estate course. Instructors who meet the criteria in R 339.22101 (m) (i), (ii), or (iii) shall be deemed approved by the department.

(2) Instructors shall be responsible for all of the following:

(a) Compliance with all laws and rules relating to real estate education.

(b) Providing students with current and accurate information.

(c) Maintaining an environment conducive to learning.

(d) Assuring and certifying attendance of students enrolled in courses.

(e) Providing assistance to students and responding to questions relating to course materials.

(f) Attending such workshops or instructional programs as required by the department.

(3) The real estate school, institution, or sponsor shall submit to the department the qualifications of each instructor to be used in an approved course not fewer than 60 days

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before the instructor is scheduled to begin instruction.

History: 1991 MR 4, Effective May 1, 1991; 1997 MR 7, Effective August 5, 1997. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22611 Syllabus.

Rule 611. Students shall be provided with a syllabus which contains, at a minimum, all of the following information:

(a) The course title.

(b) The times and dates of the course offering.

(c) The names, addresses, and telephone numbers of the course coordinator and instructor.

(d) A detailed outline of the subject matter to be covered.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22613 Student attendance and makeup policy.

Rule 613. (1) A student shall attend 100% of a course to obtain credit for the course.

(2) Credit for a distance learning course requires completion of the entire course.

(3) A real estate school, sponsor, or institution shall have a makeup policy for students who are absent from or late in arriving at regularly scheduled class sessions.

History: 1991 MR 4, Effective May 1, 1991. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22615 Misleading information.

Rule 615. A sponsor, real estate school, or institution shall not provide misleading information. Information is misleading when, taken as a whole, there is a probability that it will deceive the class of persons that it is intended to influence. A real estate school, sponsor, or institution shall not represent that the department's approval is a recommendation or endorsement of the entity to which it is issued or a course of instruction offered by it.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22617 Denial, suspension, or rescission of approval to offer courses; violation of code or rules.

Rule 617. (1) A person, sponsor, real estate school, or institution may be subject to the penalties of section 602 of the code, including disciplinary action against a course approval, for any of the following reasons:

(a) Failure to comply with the provisions of the code or these rules.

(b) Revealing or attempting to discover, or soliciting, encouraging, or inducing a person to reveal, the questions on a real estate license examination administered by or on behalf of the department.

(c) Making a substantial misrepresentation regarding a real estate school, institution, or course of study.

(d) Making a false promise of a character likely to influence, persuade, or induce regarding a real estate school, institution, or course of study.

(e) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise.

(2) The department shall have the right to review a course at any time and to

summarily suspend course approval, in accordance with section 505 of the code, where the course does not conform to the requirements of the code or these rules or where there is a high rate of failure on a licensing examination indicating lack of competent instruction.

History: 1991 MR 4, Effective May 1, 1991.

SUBPART 2. PRELICENSURE COURSES

R 339.22631 Application for approval to offer prelicensure courses; forms; required information.

Rule 631. (1) A school, sponsor, or institution shall submit an application for approval, as determined by the department, for prelicensure courses. The application shall include all of the following information:

(a) The names and evidence of approval, as determined by the department, of the qualifications of instructors and the prelicensure courses they are teaching.

(b) A detailed content outline for each prelicensure course to be taught, which shall include the number of hours allocated to each topic.

(c) The standards a student must meet to successfully complete the course, including a statement as to the grading system, attendance, and class makeup policy for prelicensure courses.

(d) A copy of the advertising materials used to promote the prelicensure courses.

(e) The tentative schedule and geographic location of prelicensure course meetings or classes.

(f) A copy of any contract for prelicensure courses that the school has with its students.

(g) The methodology for verifying and monitoring attendance and successful course completion.

(2) A change in the information required to be provided on the application forms shall be reported to the department within 30 days of the change. The department shall accept or reject a change within 60 days of notification of the change.

(3) A real estate school or institution shall also demonstrate that it is an entity which may offer prelicensure courses in accordance with section 2504 (8) of the code.

History: 1991 MR 4, Effective May 1, 1991; 1997 MR 7, Effective August 5, 1997. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22633 Rescinded.

History: 1991 MR 4, Effective May 1, 1991. Rescinded 2002, MR 16. Effective September 1, 2002.

R 339.22635 Rescinded.

History: 1991 MR 4, Effective May 1, 1991. Rescinded 2002, MR 16. Effective September 1, 2002.

R 339.22637 Rescinded.

History: 1991 MR 4, Effective May 1, 1991. Rescinded 2002, MR 16. Effective September 1, 2002.

R 339.22639 Certification of completion of course.

Rule 639. Real estate schools and institutions shall certify the completion of an approved prelicensure course in a method or on forms prescribed by the department.

Within 5 business days after final class meetings, real estate schools and institutions shall submit to the department lists of students who have completed courses.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22641 Course credit; clock hour limitation.

Rule 641. Credit shall not be given toward the prelicensure course requirements for more than 8 clock hours of instruction in 1 calendar day.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22643 Determination of compliance with prelicensure educational requirements; submittal of documentation of courses at college or university accredited by nationally recognized agency.

Rule 643. Courses which were undertaken and completed in the principles of real estate or real estate related courses at a college or university or school of law accredited by a nationally recognized accrediting agency may be submitted by an applicant for a broker's or associate broker's license, with suitable documentation concerning the courses, for consideration in determining that the applicant has met the prelicensure education requirements. This exemption shall not be used to circumvent the requirement of the code that schools and institutions receive approval.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22645 Approval of prelicensure courses; expiration date.

Rule 645. An approval of prelicensure courses which is issued by the department to a real estate school or institution shall expire annually on June 30.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22647 Application for renewal of course approval; receipt; form.

Rule 647. An application for renewal of approval of prelicensure real estate courses shall be received by the department before the expiration of the previous approval and shall be on forms prescribed by the department.

History: 1991 MR 4, Effective May 1, 1991.

SUBPART 3. CONTINUING EDUCATION COURSES

R 339.22651 Criteria for approval of continuing education courses.

Rule 651. Courses related to the activities of a real estate broker, associate broker, or salesperson that are offered to licensees shall meet all of the following criteria for department approval and be approved as determined by the department:

(a) A clear statement of the rationale, purpose, and goals shall be prepared for each course before beginning instruction.

(b) Approved instructors shall conduct each course.

(c) A syllabus shall be submitted to the department, which shall include all of the following as they are pertinent to the activities of licensees generally and, if desired, with additional reference to a specialized area of expertise:

(i) Changes in economic conditions.

(ii) Changes in laws, court opinions, and rules.

- (iii) Interpretations relating to and affecting real property.
- (iv) Any topics relevant to the management, operation, or practice of real estate.
- (d) A course administration description shall be provided, which shall include a system for verifying satisfactory completion of the course by each licensee, for providing to the department a verified list of those licensees awarded credit, and for providing participating licensees with certificates which indicate satisfactory completion of the course and which specify the department's assigned course number.
- (e) The sponsor shall submit to the department all course changes which affect the accuracy of the application for approval or accompanying documentation, including the detailed content outline.

History: 1991 MR 4, Effective May 1, 1991; Amended 1997 MR 7, Effective August 5, 1997. Amended 2002, MR 16. Effective September 1, 2002.

R 339.22653 Application for course approval.

Rule 653. (1) Annually, a proposed sponsor shall complete and submit, on forms provided by the department, an application form and documentation necessary to demonstrate that the courses meet the criteria established by these rules. The application shall be made not less than 60 days before the first date of instruction. An application shall include all of the following information:

- (a) The course title.
- (b) The date, time, and location of the tentative course offerings.
- (c) The name, address, and telephone number of the sponsoring entity.
- (d) The name, address, and telephone number of the course coordinator.
- (e) The name, address, telephone number, and qualifications of the instructors.
- (f) A detailed outline of the course offering.
- (g) A list of instructional materials.
- (h) Methodology for verifying and monitoring attendance.
- (i) A sample of the certificate of completion which will be given to licensees.
- (j) A sample of announcements or brochures of course offerings and the student syllabus.

(2) If approval is granted, a course number shall be provided to the sponsor by the department.

History: 1991 MR 4, Effective May 1, 1991; Amended 1997 MR 7, Effective August 5, 1997.

R 339.22654 Distance education; criteria for approval.

Rule 654. (1) Real estate education courses represented as fulfilling the requirements of section 2504 of the code and delivered through distance learning shall be approved as determined by the department before being offered to the public.

- (2) A distance learning course shall contain all of the following:
 - (a) All requirements listed in R 339.22653 (1).
 - (b) The individual modules of instruction on a computer or other interactive program.
 - (c) A list of at least 1 learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met the entire content of the course is understood.
 - (d) A structured learning method to enable the student to attain each learning objective.
 - (e) A method of assessment of the student's performance during each module of instruction.

(f) A method of remediation for any student who is deficient in the method of assessment to repeat the module until the student understands the content material.

(3) Delivery systems which have met the distance education criteria for current certification by the association of real estate license law officials (ARELLO) shall be acceptable to the department, as follows:

(a) Proof of ARELLO certification, including the summary sheet and certificate, shall be provided with the application for course approval.

(b) Upon notification from ARELLO that certification has been withdrawn or not renewed, the approved sponsor shall forward the notification to the department. Approval to offer distance learning courses shall be suspended until ARELLO certification is reinstated or the sponsor has applied for and received approval from the department according to subrule (3) of this rule.

(4) Equivalent delivery systems may be utilized if they are approved as determined by the department.

(5) The real estate school, institute, or sponsor shall describe in detail on its application how it will deal with hardware and software failures.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22655 Time periods; course credit.

Rule 655. To receive approval, a course shall be designed to be taught for not less than 2 clock hours, not including time spent on breaks, meals, computer tutorials, or other unrelated activities.

History: 1991 MR 4, Effective May 1, 1991; Amended 1997 MR 7, Effective August 5, 1997; Amended 2002, MR 16, Effective September 1, 2002.

R 339.22657 Examinations.

Rule 657. Course examinations shall not be required for continuing education courses unless they are required by the sponsor.

History: 1991 MR 4, Effective May 1, 1991.

R 339.22659 Attendance.

Rule 659. A licensee shall complete a total of 6 clock hours for each annual renewal period. Credit for completion of a course shall only be granted once in each annual renewal period.

History: 1991 MR 4, Effective May 1, 1991; 1997 MR 7, Effective August 5, 1997; Amended 2002, MR 16. Effective September 1, 2002.

R 339.22661 Rescinded.

History: 1991 MR 4, Effective May 1, 1991; Rescinded 2002, MR 16. Effective September 1, 2002.

R 339.22663 Reporting requirements for course completion.

Rule 663. Licensees and course sponsors shall certify the completion of an approved course in a method prescribed by the department. Within 5 calendar days course sponsors shall submit the names of students who have successfully completed the course to the department.

History: 1991 MR 4, Effective May 1, 1991; Amended 2002, MR 16. Effective September 10, 2002.

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R 339.22664 Student certification of completion.

Rule 664. (1) A real estate school, sponsor, or institution shall issue a certificate of completion to a student who successfully completes an approved real estate course. The certificate shall include all of the following information:

- (a) The date of course completion.
 - (b) The name of the course attended. If the course is approved for continuing education, the topic approval numbers, if assigned.
 - (c) The name and approval number of the school, sponsor, or institution.
 - (d) The name of the student.
 - (e) The number of clock hours completed by the student.
 - (f) The signature of the course coordinator.
- (2) Each student or licensee shall provide a state-issued photo identification or alternative form of identification to the school, sponsor, or institution before receiving the certificate of completion.

History: Added 2002, MR 16. Effective September 1, 2002.

R 339.22665 Credit earned by instructors.

Rule 665. Instructors may earn their continuing education credit for teaching a course. Credit shall not be earned if the instructor has previously obtained credit for the same course either as a student or an instructor.

History: 1991 MR 4, Effective May 1, 1991; Amended 1997 MR 7. Effective August 5, 1997.

R 339.22667 Rescinded.

History: 1991 MR 4, Eff. May 1, 1991; Rescinded 1997 MR 7, Effective August 5, 1997.

**SELLER DISCLOSURE ACT
Act 92 of 1993**

AN ACT to require certain disclosures in connection with transfers of residential property.

The People of the State of Michigan enact:

565.951 Short title.

Sec. 1. This act shall be known and may be cited as the "seller disclosure act".
History: 1993, Act 92, Eff. Jan. 10, 1994.

565.952 Applicability of seller disclosure requirements.

Sec. 2. The seller disclosure requirements of sections 4 to 13 apply to the transfer of any interest in real estate consisting of not less than 1 or more than 4 residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a residential cooperative.
History: 1993, Act 92, Eff. Jan. 10, 1994.

565.953 Seller disclosure requirements; exceptions.

Sec. 3. The seller disclosure requirements of sections 4 to 13 do not apply to any of the following:

- (a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
- (b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default.
- (c) Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.
- (d) Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (e) Transfers from 1 co-tenant to 1 or more other co-tenants.
- (f) Transfers made to a spouse, parent, grandparent, child, or grandchild.
- (g) Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment.
- (h) Transfers or exchanges to or from any governmental entity.
- (i) Transfers made by a person licensed under article 24 of Act No. 299 of the Public

Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, of newly constructed residential property that has not been inhabited.
History: 1993, Act 92, Eff. Jan. 10, 1994.

565.954 Written statement; delivery; time limits; compliance; terminating purchase agreement within certain time limits; expiration of right to terminate.

Sec. 4. (1) The transferor of any real property described in section 2 shall deliver to the transferor's agent or to the prospective transferee or the transferee's agent the written statement required by this act. If the written statement is delivered to the transferor's agent, the transferor's agent shall provide a copy to the prospective transferee or his or her agent. A written disclosure statement provided to a transferee's agent shall be considered to have been provided to the transferee. The written statement shall be delivered to the prospective transferee within the following time limits:

- (a) In the case of a sale, before the transferor executes a binding purchase agreement with the prospective transferee.
- (b) In the case of transfer by an installment sales contract where a binding purchase agreement has not been executed, or in the case of a lease together with an option to purchase or a ground lease coupled with improvements by the tenant, before the transferor executes the installment sales contract with the prospective transferee.
- (2) With respect to any transfer subject to subsection (1), the transferor shall indicate compliance with this act either on the purchase agreement, the installment sales contract, the lease, or any addendum attached to the purchase agreement, contract, or lease, or on a separate document.

(3) Except as provided in subsection (4), if any disclosure or amendment of any disclosure required to be made by this act is delivered after the transferor executes a binding purchase agreement, the prospective transferee may terminate the purchase agreement by delivering written notice of termination to the transferor or the transferor's agent within the following time limits:

- (a) Not later than 72 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee in person.
- (b) Not later than 120 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee by registered mail.

(4) A transferee's right to terminate the purchase agreement expires upon the transfer of the subject property by deed or installment sales contract.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.955 Liability for error, inaccuracy, or omission; delivery as compliance with requirements of act; conditions.

Sec. 5. (1) The transferor or his or her agent is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this act if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, or was based entirely on information provided by public agencies or provided by other persons specified in subsection (3), and ordinary care was exercised in transmitting the information. It is not a violation of this act if the transferor fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be

discovered only by a person with expertise in a science or trade beyond the knowledge of the transferor.

(2) The delivery of any information required by this act to be disclosed to a prospective transferee by a public agency or other person specified in subsection (3) shall be considered to comply with the requirements of this act and relieves the transferor of any further duty under this act with respect to that item of information, unless the transferor has knowledge of a known defect or condition that contradicts the information provided by the public agency or the person specified in subsection (3).

(3) The delivery of a report or opinion prepared by a licensed professional engineer, professional surveyor, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional's license or expertise, is sufficient compliance for application of the exemption provided by subsection (1) if the information is provided upon the request of the prospective transferee, unless the transferor has knowledge of a known defect or condition that contradicts the information contained in the report or opinion. In responding to a request by a prospective transferee, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of section 7 and, if so, shall indicate the required disclosures, or parts of disclosures, to which the information being furnished applies. In furnishing the statement, the expert is not responsible for any items of information other than those expressly set forth in the statement.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.956 Disclosures; inaccuracy as result of action, occurrence, or agreement after delivery; unknown or unavailable information; basis.

Sec. 6. If information disclosed in accordance with this act becomes inaccurate as a result of any action, occurrence, or agreement after the delivery of the required disclosures, the resulting inaccuracy does not constitute a violation of this act. If at the time the disclosures are required to be made, an item of information required to be disclosed under this act is unknown or unavailable to the transferor, the transferor may comply with this act by advising a prospective purchaser of the fact that the information is unknown. The information provided to a prospective purchaser pursuant to this act shall be based upon the best information available and known to the transferor.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.957 Disclosure; form.

Sec. 7. (1) The disclosures required by this act shall be made on the following form:

SELLER'S DISCLOSURE STATEMENT

Property Address: _____
 Street _____
 _____ Michigan
 City, Village, or Township _____

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the seller disclosure act. This statement is a disclosure of the condition and information concerning the property, known by the seller. Unless otherwise advised, the seller does not possess any expertise in construction, architecture, engineering, or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction, and is not a substitute for any inspections or warranties the buyer may wish to obtain.

Seller's Disclosure: The seller discloses the following information with the knowledge that even though this is not a warranty, the seller specifically makes the following representations based on the seller's knowledge at the signing of this document. Upon receiving this statement from the seller, the seller's agent is required to provide a copy to the buyer or the agent of the buyer. The seller authorizes its agent(s) to provide a copy of this statement to any prospective buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the seller and are not the representations of the seller's agent(s), if any. This information is a disclosure only and is not intended to be a part of any contract between buyer and seller.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order (the items below are included in the sale of the property only if the purchase agreement so provides):

	Yes	No	Unknown	Not Avail.
Range/Oven	_____	_____	_____	_____
Dishwasher	_____	_____	_____	_____
Refrigerator	_____	_____	_____	_____
Hood/fan	_____	_____	_____	_____
Disposal _____	_____	_____	_____	_____
TV antenna, TV rotor & controls	_____	_____	_____	_____
Electrical system	_____	_____	_____	_____
Garage door opener & remote control	_____	_____	_____	_____
Alarm system	_____	_____	_____	_____
Intercom	_____	_____	_____	_____
Central vacuum	_____	_____	_____	_____
Attic fan	_____	_____	_____	_____
Pool heater, wall liner & equipment	_____	_____	_____	_____

Microwave	_____	_____	_____	_____
Trash compactor	_____	_____	_____	_____
Ceiling fan	_____	_____	_____	_____
Sauna/hot tub	_____	_____	_____	_____
Washer	_____	_____	_____	_____
Dryer	_____	_____	_____	_____
Lawn sprinkler system	_____	_____	_____	_____
Water heater	_____	_____	_____	_____
Plumbing system	_____	_____	_____	_____
Water softener/conditioner	_____	_____	_____	_____
Well & pump	_____	_____	_____	_____
Septic tank & drain field	_____	_____	_____	_____
Sump pump	_____	_____	_____	_____
City Water System	_____	_____	_____	_____
City Sewer System	_____	_____	_____	_____
Central air conditioning	_____	_____	_____	_____
Central heating system	_____	_____	_____	_____
Wall furnace	_____	_____	_____	_____
Humidifier	_____	_____	_____	_____
Electronic air filter	_____	_____	_____	_____
Solar heating system	_____	_____	_____	_____
Fireplace & chimney	_____	_____	_____	_____
Wood burning system	_____	_____	_____	_____

Explanations (attach additional sheets if necessary):

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED, WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

1. **Basement/crawl space:** Has there been evidence of water? yes ____ no ____

If yes, please explain: _____

2. **Insulation:** Describe, if known. _____

Urea Formaldehyde Foam Insulation (UFFI) is installed? unknown ____ yes ____ no ____

3. **Roof:** Leaks? yes ____ no ____

Approximate age if known: _____

4. **Well:** Type of well (depth/diameter, age and repair history, if known):

Has the water been tested? yes ____ no ____

If yes, date of last report/results: _____

5. **Septic tanks/drain fields:** Condition, if known: _____

6. **Heating system:** Type/approximate age: _____

7. **Plumbing system:** Type: copper ____ galvanized ____ other ____

Any known problems? _____

8. **Electrical system:** Any known problems? _____

9. **History of infestation, if any:** (termites, carpenter ants, etc.) _____

10. **Environmental Problems:** Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on the property.

unknown ____ yes ____ no ____

If yes, please explain: _____

11. **Flood insurance:** Do you have flood insurance on the property?

unknown ____ yes ____ no ____

12. **Mineral rights:** Do you own the mineral rights? unknown ___ yes ___ no ___

Other Items: Are you aware of any of the following:

1. Features of the property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property?

unknown ___ yes ___ no ___

2. Any encroachments, easements, zoning violations, or non-conforming uses?

unknown ___ yes ___ no ___

3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others), or a homeowners' association that has any authority over the property?

unknown ___ yes ___ no ___

4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors?

unknown ___ yes ___ no ___

5. Settling, flooding, drainage, structural, or grading problems?

unknown ___ yes ___ no ___

6. Major damage to the property from fire, wind, floods, or landslides?

unknown ___ yes ___ no ___

7. Any underground storage tanks?

unknown ___ yes ___ no ___

8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?

unknown ___ yes ___ no ___

9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge?

unknown ___ yes ___ no ___

10. Any outstanding municipal assessments or fees? unknown ___ yes ___ no ___

11. Any pending litigation that could affect the property or the seller's right to convey the property?

unknown ___ yes ___ no ___

If the answer to any of these questions is yes, please explain. Attach additional sheets, if necessary:

The seller has lived in the residence on the property from _____ (date) to _____ (date). The seller has owned the property since _____ (date). The seller has indicated above the condition of all the items based on information known to the seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, seller will immediately disclose the changes to buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or broker's agent.

Seller certifies that the information in this statement is true and correct to the best of seller's knowledge as of the date of seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.732, IS AVAILABLE TO THE PUBLIC. BUYERS SEEKING THAT INFORMATION SHOULD CONTACT THE APPROPRIATE LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, HOMESTEAD EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE. BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.

Seller _____ Date _____

Seller _____ Date _____

Buyer has read and acknowledges receipt of this statement.

Buyer _____ Date _____ Time: _____
Buyer _____ Date _____ Time: _____

(2) A form described in subsection (1) printed before the effective date of the 2000 amendatory act that amended this subsection that was in compliance with this section at that time may be utilized and shall be considered in compliance with this

section until 90 days after the effective date of the 2000 amendatory acts that amended this subsection.

History: 1993, Act 92, Eff. Jan. 10, 1994;--Am. 1995, Act 106, Eff. Jan. 1, 1996;--Am. 1996, Act 92, Eff. Feb. 27, 1996--Am.2000, Act 12, Eff. March 08, 2000--Am. 2000, Act 13, Eff. March 08, 2000.

565.958 Availability of copies.

Sec. 8. Copies of the form prescribed in section 7 shall be made available to the public by all real estate brokers and real estate salespersons.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.959 Additional disclosures.

Sec. 9. A city, township, or county may require disclosures in addition to those disclosures required by section 7, and may require disclosures on a different disclosure form in connection with transactions subject to this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.960 Disclosure; good faith.

Sec. 10. Each disclosure required by this act shall be made in good faith. For purposes of this act, "good faith" means honesty in fact in the conduct of the transaction.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.961 Other obligations created by law not limited.

Sec. 11. The specification of items for disclosure in this act does not limit or abridge any obligation for disclosure created by any other provision of law regarding fraud, misrepresentation, or deceit in transfer transactions.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.962 Disclosure; amendment.

Sec. 12. Any disclosure made pursuant to this act may be amended in writing by the transferor, but the amendment is subject to section 4.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.963 Disclosure; manner of delivery.

Sec. 13. Delivery of a disclosure statement required by this act shall be by personal delivery, facsimile delivery, or by registered mail to the prospective purchaser. Execution of a facsimile counterpart of the disclosure statement shall be considered to be execution of the original.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.964 Transfer not invalidated by noncompliance.

Sec. 14. A transfer subject to this act shall not be invalidated solely because of the failure of any person to comply with a provision of this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.965 Liability of agent.

Sec. 15. An agent of a transferor shall not be liable for any violation of this act by a transferor unless any agent knowingly acts in concert with a transferor to violate this act.

History: 1993, Act 92, Eff. Jan. 10, 1994.

565.966 Effective date.

Sec. 16. This act shall take effect upon the expiration of 180 days after the date of its enactment.

History: 1993, Act 92, Eff. Jan. 10, 1994.

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

P. A. 220 of 1976, as amended

Excepts, including ARTICLE 5 (Housing)

AN ACT to define the civil rights of persons with disabilities; to prohibit discriminatory practices, policies, and customs in the exercise of those rights; to prescribe penalties and to provide remedies; and to provide for the promulgation of rules.

History: 1976, Act 220 Eff. Mar. 31, 1977; – Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981.

37.1101 Short title.

Sec. 101. This act shall be known and may be cited as the “persons with disabilities civil rights act”.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1102 Opportunity guaranteed; civil right; accommodation of person with disability; undue hardship.

Sec. 102. (1) The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.

(2) Except as otherwise provided in article 2, a person shall accommodate a person with a disability for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981 ;--Am. 1990, Act 121, Imd. Eff. June 25, 1990 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1103 Definitions.

Sec. 103. As used in this act:

(d) Except as provided under subdivision (f), “disability” means 1 or more of the following: (NOTE: subdivision (f) relates to Article 2, “employment”)

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

(D) For purposes of article 5, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent, or maintain property.

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i).

(f) For purposes of article 2, disability does not include either of the following:

(i) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual.

(ii) A determinable physical or mental characteristic caused by the use of an alcoholic liquor by that individual, if that physical or mental characteristic prevents that individual from performing the duties of his or her job.

(g) “Person” includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state, or any other legal, commercial, or governmental entity or agency.

(h) “Person with a disability” or “person with disabilities” means an individual who has 1 or more disabilities.

(i) “Unrelated to the individual's ability” means, with or without accommodation, an individual's disability does not prevent the individual from doing 1 or more of the following:

(i) For purposes of article 2, performing the duties of a particular job or position.

(iv) For purposes of article 5, acquiring, renting, or maintaining property.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981 ;--Am. 1990, Act 121, Imd. Eff. June 25, 1990 ;--Am. 1992, Act 123, Imd. Eff. June 29, 1992 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 ;--Am. 1999, Act 201, Eff. Mar. 10, 2000 .

Cited in other sections: Section 37.1103 is cited in §§ 38.1369e and 168.504.

37.1501 Definitions.

Sec. 501. As used in this article: (a) “Housing accommodation” includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more persons.

(b) “Immediate family” means a spouse, parent, child, or sibling.

(c) “Real estate broker or salesman” means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these persons.

(d) “Real estate transaction” means the sale, exchange, rental, or lease of real property, or an interest therein.

(e) “Real property” includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

History: 1976, Act 220, Eff. Mar. 31, 1977 .

37.1502 Owners, persons engaging in real estate transactions, real estate brokers, and real estate salesmen; prohibited conduct.

Sec. 502. (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids: (a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, fail to bring a property listing to a person's attention, refuse to permit a person to inspect real property, or otherwise deny or make real property unavailable to a person.

(f) Make, print, circulate, post, or mail or cause to be made or published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect to a real estate transaction.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(h) Discriminate against a person in the brokering or appraising of real property.

(2) A person shall not deny a person access to or membership or participation in a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property, or discriminate against a person in the terms or conditions of that access, membership, or participation.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1992, Act 123, Imd. Eff. June 29, 1992 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1503 Certain rentals excepted from § 37.1502.

Sec. 503. Section 502 shall not apply to the rental of a housing accommodation in a building which contains housing accommodations for not more than 2 families living independently of each other, if the owner or a member of the owner's immediate family

resides in 1 of the housing accommodations, or to the rental of a room or rooms in a single housing dwelling by a person if the lessor or a member of the lessor's immediate family resides therein.

History: 1976, Act 220, Eff. Mar. 31, 1977 .

37.1504 Financial assistance or financing; prohibited conduct.

Sec. 504. A person shall not discriminate on the basis of disability in making or purchasing loans for acquiring, constructing, improving, repairing, or maintaining real property, or in providing other financial assistance secured by or otherwise related to real property.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1992, Act 123, Imd. Eff. June 29, 1992 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1505 Information as to applicant's credit worthiness.

Sec. 505. Nothing in this article shall be considered to prohibit an owner, lender, or his or her agent from requiring that an applicant who seeks to buy, rent, lease, or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business, or employment status or other information designed solely to determine the applicant's credit worthiness, but not concerning disabilities for reasons contrary to the provisions or purposes of this act.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1506 Prohibited representations.

Sec. 506. A person shall not represent, for the purpose of inducing a real estate transaction from which he or she may benefit financially or otherwise, that a change has occurred or will or may occur in the composition with respect to persons with disabilities of the owners or occupants in the block, neighborhood, or area in which the real property is located, or represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1506a Real estate transaction; prohibited conduct; "covered multifamily dwellings" defined.

Sec. 506a. (1) A person shall not do any of the following in connection with a real estate transaction: (a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features: (i) The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.

(ii) The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(iii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(iv) All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

(2) As used in this section, "covered multifamily dwellings" means buildings consisting of 4 or more units if the buildings have 1 or more elevators, and ground floor units in other buildings consisting of 4 or more units.

History: Add. 1992, Act 123, Imd. Eff. June 29, 1992 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

37.1507 Person subject to article; plan.

Sec. 507. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have disabilities, if the plan is filed with the commission under rules of the commission and the commission has not disapproved the plan.

History: 1976, Act 220, Eff. Mar. 31, 1977 ;--Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998 .

Admin Rule: R 37.27 et seq. of the Michigan Administrative Code.

ELLIOTT-LARSEN CIVIL RIGHTS ACT

Act 453 of 1976, as amended

Excerpts, including Article 5 (Housing)

AN ACT to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, height, weight, familial status, or marital status; to preserve the confidentiality of records regarding arrest, detention, or other disposition in which a conviction does not result; to prescribe the powers and duties of the civil rights commission and the department of civil rights; to provide remedies and penalties; to provide for fees; and to repeal certain acts and parts of acts.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977 ;--Am. 1979, Act 91, Imd. Eff. Aug. 1, 1979 ;--Am. 1982, Act 45, Eff. Mar. 30, 1983 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 ;--Am. 1992, Act 258, Imd. Eff. Dec. 7, 1992 .

37.2102 Recognition and declaration of civil right; action arising out of discrimination based on sex or familial status. [M.S.A. 3.548(102)]

Sec. 102.

(1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

(2) This section shall not be construed to prevent an individual from bringing or continuing an action arising out of sex discrimination before July 18, 1980 which action is based on conduct similar to or identical to harassment.

(3) This section shall not be construed to prevent an individual from bringing or continuing an action arising out of discrimination based on familial status before the effective date of the amendatory act that added this subsection which action is based on conduct similar

to or identical to discrimination because of the age of persons residing with the individual bringing or continuing the action.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1979, Act 91, Imd. Eff. Aug. 1, 1979 ;--Am. 1980, Act 202, Imd. Eff. July 18, 1980 ;--Am. 1982, Act 45, Eff. Mar. 30, 1983 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2103 Definitions.

Sec. 103.

As used in this act:

(a) "Age" means chronological age except as otherwise provided by law.

(b) "Commission" means the civil rights commission established by section 29 of article V of the state constitution of 1963.

(c) "Commissioner" means a member of the commission.

(d) "Department" means the department of civil rights or its employees.

(e) "Familial status" means 1 or more individuals under the age of 18 residing with a parent

or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, "parent" includes a person who is pregnant.

(f) "National origin" includes the national origin of an ancestor.

(g) "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state or a political subdivision of the state or an agency of the state, or any other legal or commercial entity.

(h) "Political subdivision" means a county, city, village, township, school district, or special district or authority of the state.

(i) Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

(i) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.

(ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, public accommodations or public services, education, or housing.

(iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education,

or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1980, Act 202, Imd. Eff. July 18, 1980 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 ;--Am. 1999, Act 202, Eff. Mar. 10, 2000 .

Compiler's Note: Enacting section 1 of Act 202 of 1999 provides: "Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision *Neal v Department of Corrections*, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act. "

37.2501 Definitions. [M.S.A. 3.548(501)]

Sec. 501.

As used in this article:

(a) "Real property" includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

(b) "Real estate transaction" means the sale, exchange, rental, or lease of real property, or an interest therein.

(c) "Housing accommodation" includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more persons.

(d) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property; who negotiates or attempts to negotiate any of those activities; who holds himself out as engaged in those activities; who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property; who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of a real estate broker or salesman.

History: 1976, Act 453, Eff. Mar. 31, 1977 .

37.2502 Persons engaging in real estate transactions, real estate brokers, or real estate salesmen; prohibited practices; section subject to § 37.2503. [M.S.A. 3.548(502)]

Sec. 502.

(1) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person or a person residing with that person:

(a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.

(f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

(h) Discriminate against a person in the brokering or appraising of real property.

(2) A person shall not deny a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property or to discriminate against him or her in the terms or conditions of that access, membership, or participation because of religion, race, color, national origin, age, sex, familial status, or marital status.

(3) This section is subject to section 503.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2503 Nonapplicability of § 37.2502; “immediate family” defined; information relative to marital status. [M.S.A. 3.548(503)]

Sec. 503.

(1) Section 502 does not apply to any of the following:

(a) The rental of a housing accommodation in a building that contains housing accommodations for not more than 2 families living independently of each other if the owner or a member of the owner's immediate family resides in 1 of the housing accommodations, or to the rental of a room or rooms in a single family dwelling by a person if the lessor or a member of the lessor's immediate family resides in the dwelling.

(b) The rental of a housing accommodation for not more than 12 months by the owner or lessor if it was occupied by him or her and maintained as his or her home for at least 3

months immediately preceding occupancy by the tenant and is maintained as the owner's or lessor's legal residence.

(c) With respect to the age provision and the familial status provision only, the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older.

(2) As used in subsection (1), “immediate family” means a spouse, parent, child, or sibling.

(3) Information relative to the marital status of an individual may be obtained when necessary for the preparation of a deed or other instrument of conveyance.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2504 Application for financial assistance or financing; prohibited practices; nonapplicability of § 37.2504(1)(b). [M.S.A. 3.548(504)]

Sec. 504.

(1) A person to whom application is made for financial assistance or financing in connection with a real estate transaction or in connection with the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of that person, shall not:

(a) Discriminate against the applicant because of the religion, race, color, national origin, age, sex, familial status, or marital status of the applicant or a person residing with the applicant.

(b) Use a form of application for financial assistance or financing or make or keep a record or inquiry in connection with an application for financial assistance or financing which indicates, directly or indirectly, a preference, limitation, specification, or discrimination as to the religion, race, color, national origin, age, sex, familial status, or marital status of the applicant or a person residing with the applicant.

(2) A person whose business includes engaging in real estate transactions shall not discriminate against a person because of religion, race, color, national origin, age, sex, familial status, or marital status, in the purchasing of loans for acquiring, constructing, improving, repairing, or maintaining a dwelling or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

(3) Subsection (1)(b) does not apply to a form of application for financial assistance prescribed for the use of a lender regulated as a mortgagee under the national housing act, chapter 847, 48 Stat. 1246, or by a regulatory board or officer acting under the statutory authority of this state or the United States.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2505 Condition, restriction, or prohibition limiting use or occupancy of real property; exceptions; inserting or honoring void provision. [M.S.A. 3.548(505)]

Sec. 505.

(1) A condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of religion, race, color, national origin, age, sex, familial status, or marital status is void, except a limitation of use as provided in section 503(1)(c) or on the basis of religion relating to real property held by a religious institution or organization, or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(2) A person shall not insert in a written instrument relating to real property a provision that is void under this section or honor such a provision in the chain of title.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1980, Act 170, Imd. Eff. June 18, 1980 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2506 Real estate transactions; prohibited representations. [M.S.A. 3.548(506)]

Sec. 506.

A person shall not represent, for the purpose of inducing a real estate transaction from which the person may benefit financially, that a change has occurred or will or may occur in the composition with respect to religion, race, color, national origin, age, sex, familial status, or marital status of the owners or occupants in the block, neighborhood, or area in which the real property is located, or represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2506a Use by landlord of reasonable accommodations. [M.S.A. 3.548(506a)]

Sec. 506a.

This article does not preclude the use by a landlord of reasonable accommodations as required by section 102(2) of the Michigan persons with disabilities civil rights act, Act No. 220 of the Public Acts of 1976, being section 37.1102 of the Michigan Compiled Laws.

History: Add. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2507 Plan. [M.S.A. 3.548(507)]

Sec. 507.

A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to religion, race,

color, national origin, or sex if the plan is filed with the commission under rules of the commission and the commission approves the plan.

History: 1976, Act 453, Eff. Mar. 31, 1977 .

Admin Rule: R 37.27 et seq. of the Michigan Administrative Code.

37.2605 Findings of fact and conclusions of law; cease and desist order; amendment of pleadings; findings and order based thereon; copies of order; scope of action ordered; certification of violation to licensing or contracting agency. [M.S.A. 3.548(605)]

Sec. 605.

(1) If the commission, after a hearing on a charge issued by the department, determines that the respondent has violated this act or the handicappers' civil rights act, Act No. 220 of the Public Acts of 1976, being sections 37.1101 to 37.1607 of the Michigan Compiled Laws, the commission shall state its findings of fact and conclusions of law and shall issue a final order requiring the respondent to cease and desist from the discriminatory practice and to take such other action as it deems necessary to secure equal enjoyment and protection of civil rights. If at a hearing on a charge, a pattern or practice of discrimination prohibited by this act or Act No. 220 of the Public Acts of 1976 appears in the evidence, the commission may, upon its own motion or on motion of the claimant, amend the pleadings to conform to the proofs, make findings, and issue an order based on those findings. A copy of the order shall be delivered to the respondent, the claimant, the attorney general, and to other public officers and persons as the commission deems proper.

(2) Action ordered under this section may include, but is not limited to:

(a) Hiring, reinstatement, or upgrading of employees with or without back pay.

(b) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on the job training program, or other occupational training or retraining program, with the utilization of objective

criteria in the admission of persons to those programs.

(c) Admission of persons to a public accommodation or an educational institution.

(d) Sale, exchange, lease, rental, assignment, or sublease of real property to a person.

(e) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent.

(f) Reporting as to the manner of compliance.

(g) Requiring the posting of notices in a conspicuous place which the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information which the commission determines necessary to explain those laws.

(h) Payment to an injured party of profits obtained by the respondent through a violation of section 506 of this act or of Act No. 220 of the Public Acts of 1976.

(i) Payment to the complainant of damages for an injury or loss caused by a violation of this act, including a reasonable attorney's fee.

(j) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney fees and expert witness fees, if the commission determines that award to be appropriate.

(k) Payment of a civil fine for a violation of article 5 of this act, an amount directly related to the cost to the state for enforcing this statute not to exceed:

(i) \$10,000.00 for the first violation.

(ii) \$25,000.00 for the second violation within a 5-year period.

(iii) \$50,000.00 for 2 or more violations within a 7-year period.

(l) Other relief the commission deems appropriate.

(3) In the case of a respondent operating by virtue of a license issued by the state, a political subdivision, or an agency of the state or political subdivision, if the commission, upon notice and hearing, determines that the respondent has violated this act and that the violation was authorized, requested, commanded, performed, or knowingly permitted by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the licensing agency. Unless the commission's finding is reversed in the course of judicial review, the finding of the commission may be grounds for revocation of the respondent's license.

(4) In the case of a respondent who violates this act in the course of performing under a contract or subcontract with the state, a political subdivision, or an agency of the state or political subdivision, where the violation was authorized, requested, commanded, performed, or knowingly permitted by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the contracting agency. Unless the commission's finding is reversed in the course of judicial review, the finding is binding on the contracting agency.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

37.2701 Prohibited conduct. [M.S.A. 3.548(701)]

Sec. 701.

Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Willfully interfere with the performance of a duty or the exercise of a power by the commission or 1 of its members or authorized representatives.

(e) Willfully obstruct or prevent a person from complying with this act or an order issued or rule promulgated under this act.

(f) Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1992, Act 124, Imd. Eff. June 29, 1992 .

Admin Rule: R 37.1 et seq. of the Michigan Administrative Code.

37.2703 Revocation or suspension of license. [M.S.A. 3.548(703)]

Sec. 703.

If a certification is made pursuant to section 605(3), the licensing agency may take appropriate action to revoke or suspend the license of the respondent.

History: 1976, Act 453, Eff. Mar. 31, 1977 .

FAIR HOUSING IN MICHIGAN

prepared by

Michigan Civil Rights Commission

Jurisdiction of the Commission

It shall be the duty of the (Michigan civil rights) commission . . . to investigate alleged discrimination against any person because of religion, race, color, or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such 'discrimination.'

MICHIGAN CONSTITUTION OF 1963, V. §§29.

The sources of civil rights, the equal protection of which is the Commission's duty, are: federal law arising out of either federal statutes or the Constitution of the United States; Michigan Law arising out of state statutes or the common law of the State; and the 1963 Michigan Constitution (BEECH GROVE INVESTMENT COMPANY, ET. AT., V. CIVIL RIGHTS COMMISSION OF THE STATE OF MICHIGAN, 380 MICH 405).

Civil rights in relation to housing and real property are defined in the following citations from federal and state statutory and case law. The Michigan Department of Civil Rights and the Civil Rights Commission will handle complaints falling under:

FEDERAL LAW

1. THE CIVIL RIGHTS ACT OF 1866. This law, adopted pursuant to the 13th Amendment abolishing slavery and all incidents thereof, provides, in pertinent part: 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.' (42 U.S.C. § 1982). The U.S. Supreme Court has held that this law prohibits racial discrimination in all property transactions (JONES ET UX. V. ALFRED H. MAYER CO., ET ALL, 392 U.S. 409).

2. THE CIVIL RIGHTS ACT OF 1968. Title VIII of this act prohibits discrimination in housing, effective in three stages culminating January 1, 1970. While complaint and remedy procedures are vested in the U.S. Department of Housing and Urban Development and the federal courts, the law provides for referral of cases to state and local agencies empowered to enforce comparable state or local laws (PUBLIC LAW 90-284). The 1988 Fair Housing Amendments to Title VIII make it unlawful to:

1. Discriminate in the purchasing of loans, i.e., the purchasing of mortgages in the secondary mortgage market.
2. Discriminate in the appraisal of residential real estate, i.e., an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with a real estate transaction.
3. Discriminate by denying any person access to, or membership or participation in, any multiple listing service, real estate broker's organization or facility relating to the business of selling or renting dwellings.

State Law

3. THE COMMON LAW. The Michigan Supreme Court has held that 'there is a civil right to private housing both at common law and under the 1963 Michigan Constitution where . . . that housing has been publically offered for sale by one who is in the business of selling housing to the public' (BEECH GROVE INVESTMENT COMPANY, ET AL. v. CIVIL RIGHTS COMMISSION OF THE STATE OF MICHIGAN, 380 MICH 405).

4. ELLIOTT-LARSEN CIVIL RIGHTS ACT. This law (P.A. 453 of 1976) took effect March 31, 1977, and replaces the old Michigan Fair Housing Act of 1968. The housing article of the law contains provisions summarized in the following comments.

5. PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (formally known as HANDICAPPER'S CIVIL RIGHTS ACT). Coverage of physical and mental handicap in housing was added under Article V of P.A. 220 of 1976.

Summary of Civil Rights Act

Unfair Housing Practices Prohibited by law include:

- Refusing to negotiate for or engage in a real estate transaction with a person because of race, color, religion, national origin, age, sex, familial status, marital status, or mental and physical handicap; discrimination in the terms, conditions or privileges of a rental, lease, or purchase or in the furnishing of facilities or services in connection with such a transaction, i.e., appraising.
- Refusing to receive or failing to transmit an offer to rent or purchase property; representing that available property is not available for inspection, sale or rent; failing to bring a property listing to a person's attention; refusing to permit a person to inspect property under reasonable conditions.
- Publishing or advertising, directly, or indirectly, an intent to make a limitation, specification or discrimination based on race, color, religion, national origin, age, sex, familial status, marital status, or mental and physical handicap.
- Offering soliciting, accepting, using or retaining a property listing with the understanding that a person may be discriminated against.

EXEMPTED under the law are:

- Rental of a unit in a two-family structure, if one of the two units is occupied by the owner, a person leasing the entire structure, or a member of the family of the owner or lessor.
- Rental of a room or rooms in a single-family dwelling by the owner or lessor if the owner or a member of his or her family lives there.
- Sale or rental by the owner or lessor of a housing unit in a one - or two-family dwelling which was not in any manner listed or publically advertised for sale or rental.
- Rental of a housing unit for 12 months or less by owner or lessor where it was occupied by and maintained as the owner's home for at least three months immediately before occupancy by the tenant and is temporarily vacated while maintaining legal residence there (subletting).NOTE: As the Civil Rights Act of 1866 prohibits racial discrimination in all property transactions, the exemptions in the Michigan Elliott-Larsen Civil Rights Act are considered void with regard to racial discrimination.

LENDERS are prohibited from discrimination against applicants for mortgages and other home loans. They may not use an application form or make a record or inquiry which directly or indirectly indicates a person's race, color, religion, national origin, age, sex, familial status, marital status or physical and mental handicap.

'BLOCKBUSTING' is also prohibited. It is unfair housing practice for a person, for the purpose of bringing about the sale or real estate from which he or she may benefit financially, to engage in activities in a neighborhood aimed at promoting the sales or listings based on any implication about change in a neighborhood with respect to a religion, race, color, national origin, age, sex, familial status, marital status or mental and physical handicap, or that such changes will or may result in lower property values, crime increase, or decline in school quality. It is a violation of the law to solicit sales or listings after the property owner has expressly requested the solicitor or his company to stop soliciting.

RACIAL STEERING is prohibited under Section 506 of the Civil Rights Act. It is an unlawful practice to treat racial minorities differently with respect to promotion, advertising, or showing of houses.

PROTECTION AGAINST RETALIATION, COERCION, etc., is provided. The law prohibits retaliating or discrimination against a person because he or she has opposed an unfair housing practice, or because he or she had made a charge, filed a complaint, testified, assisted or participated in an investigation or any proceeding under a fair housing law. It is unlawful to coerce a person to violate a fair housing law; to interfere with the Civil Rights Commission in the performance of its duties or exercise of its powers; to willfully obstruct or prevent a person from obeying the law or an order of the Civil Rights Commission.

REMEDIES UNDER STATE LAWS. Persons who believe they have been victims of unfair housing practices may seek remedies through one of the following:

- Filing a complaint with the Michigan Civil Rights Commission; or
- Filing a complaint with a local commission on human relations, which may be established by local ordinance; or
- Filing a private civil lawsuit in circuit court.

THE MICHIGAN CIVIL RIGHTS COMMISSION receives, initiates, investigates, and holds hearings on complaints of unfair housing practices. Complaints must be filed within 180 days after the alleged unfair housing practice occurred.

THE COMMISSION'S PROCEDURES when a complaint is filed are:

- A sworn complaint is taken from the complainant and is placed on the Commission's docket. A copy of this complaint is sent to the party against whom the complaint is made (respondent). After a complaint has been filed, if circumstances indicate such action is necessary, the Commission may ask for a court order to restrain the respondent for up to 30 days from taking any action

that might prevent the Commission from securing a proper remedy. At this point the court may decide to hear the case on its merits for immediate disposition.

- The complaint is assigned to a Civil Rights Commission representative for investigation. The Commission, by beginning this investigation, does not make any judgment on the merits of the complaint, realizing that at this time it does not have any statement from the respondent as to his or her version of the matter.
- The respondent is asked to meet with the Commission representative to give his or her statement regarding the incident. This is the first step of an investigation, which may include the examination of witnesses, books and records, inspection of property, and taking of deposition. The respondent or his or her lawyer is given every opportunity to reply to the complaint and to offer evidence or witnesses.
- A staff determination is made, on the basis of the investigation, whether there is sufficient evidence to credit the complaint. If there is not sufficient evidence, the complaint is presented to the Commissioners for dismissal. Following such a dismissal, complainant may petition for reconsideration of the decision and may be granted a hearing to offer arguments why the decision should be changed.
- If sufficient grounds have been found, after investigation, to credit the complaint, the respondent is invited to a conciliation conference, where an attempt is made in private discussion to adjust the matter. According to law, what takes place in conciliation may not be discussed publicly by the Commission or its staff.
- If the efforts in conciliation are successful, the case is recommended to the Commissioners for closing and the complainant and respondent are so notified. Either complainant or respondent may petition for reconsideration of the terms of conciliation and may be granted a hearing to offer arguments why the terms should be changed.
- If conciliation efforts are not successful, the Commission may issue a formal charge and set a date for a formal public hearing. Within 15 days after receiving notice of the hearing, the respondent may ask the circuit court to decide the case instead of the Commission.
- The public hearing is conducted by one or more Civil Rights Commissions, or a referee, and a transcript is made of the proceedings. All witnesses testify under oath, the rules of evidence apply, and all parties have the right to examine and cross-examine the witnesses and present evidence. The burden of proof is on the Commission staff or the complainant.

- Following the hearing, an appropriate order is issued by the Commission either dismissing the complaint, or directing the appropriate remedial action be taken by the respondent.

REMEDIES THAT MAY BE ORDERED by the Commission are:

- An order to the respondent to cease and desist from the unfair housing practice.
- Orders requiring the respondent to report as to how he or she complies with the order, and to keep and produce records so the Commission can determine whether he or she is complying with the order.
- Orders assessing damages, including reasonable attorney fees, profits obtained through violation of the acts, and costs.
- An order requiring the respondent to pay a civil fine for violation of Article 5 of the Elliott-Larsen Civil Rights Act.

COURT ORDERS the Commission may see are:

- An order requiring the respondent to sell or rent property to an individual.
- An award to the complainant for economic damages resulting from an unfair housing practice.
- An order requiring the respondent to pay a fine to the State, if the unfair housing practice was committed in the course of his or her business or selling or renting housing.

COURT ACTION a respondent may seek:

- Where a case is dismissed, a respondent has a right to petition the circuit court against the complainant for an award not to exceed actual costs and actual attorney fees.
- A temporary restraining order or injunction which could also forbid the sale of property.

BUILDERS AND REAL ESTATE BROKER'S AND SALESPERSONS' LICENSES may be suspended or revoked by the Department of Consumer & Industry Services where licensees have violated the civil rights acts. The Commission is required to certify a finding of discrimination to the Department of Consumer & Industry Services, which may suspend or revoke the license of the person against whom discrimination was found.

APPEALS from Commission decisions may be taken to circuit court, which has authority to review and enforce the Commission's orders.

IN PRIVATE LAWSUITS, the circuit court may provide the same remedies as those available through the Department of Civil Rights or the Civil Rights Commission.

When land is Subdivided

THE LAND DIVISION ACT OF 1967

P.A. 288, of 1967, as amended

Brokers and salespersons interested or involved in subdividing land should thoroughly inform themselves of the provisions of this Act, whether they subdivide land themselves or act as agents for subdividers.

Purpose of Act.

The objectives of the Act are: to further the orderly layout of land, to require that land be suitable for building sites and public improvements, that there be adequate drainage, that it be surveyed and conveyed by accurate legal descriptions and that it be served by the adequate streets or roads.

The Act designates the conditions required for approval of plats. It also sets forth the authority of the various local units, county agencies and state agencies with whom preliminary and final plats must be filed and approved.

The definition of "subdivide" covers the partitioning or dividing of land for sale, lease or building development which are neither an exempt split nor a division approved by the local municipality.

The penalty section prohibits "any person, firm, or corporation" from selling or agreeing to sell lots, pieces or parcels of land unless a plat has first been recorded, when required by the provisions of the Act. This section also provides that any person who violates any other provision of the Act is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Written disclosure must be made to purchasers of lots on private roads in recorded plats or unplatted parcels of land on private roads in unincorporated areas. The purchaser is required to be notified in writing on a separate instrument to be attached to the instrument conveying any interest, that the county road commission is not required to maintain the private road. Failure, to comply with this provision permit the purchaser to void the contract or agreement of sale at his or her option.

Deeds may not be recorded showing lots designated by number unless the lots are in a recorded plat.

A lot may not be further divided unless the local unit of government has first adopted an ordinance permitting this practice.

A residential building may not be constructed within a flood plain as delineated on the plat.

Some plats were made and recorded many years ago, and some unsold lots are too small for approval as building sites today. It is possible to replat these subdivisions; however, in all cases a new plat must be filed.

The Manufactured Housing and Subdivision Control Division, Department of Consumer & Industry Services, P.O. Box 30704, Lansing, MI 48909, issues, for a fee, information regarding subdivision instructions. Copies of the Act and the

Administrative Rules are also available. Brokers and salespersons having questions or special problems concerning the Act should contact the department. By telephone, please call 517-241-6300 (general number). By mail, see address above.

THE MICHIGAN LAND SALES ACT

P.A. 286 of 1972, as amended

The Michigan Land Sales Act is an act to regulate the advertising , promotion, offer, sale or lease of lots, parcels, units or interests in land within real estate subdivisions or subdivided lands of 25 or more lots regardless of size, if marketed within the state of Michigan. Subdivided land includes land located either inside or outside the state of Michigan.

For the purpose of the act subdivided lands include 25 or more lots, parcels, units or interests that are divided or proposed to be divided. It also includes 25 or more lots, parcels, units or interests if sold under a common promotional plan and any phase development which accumulates a total of 25 or more lots, parcels, units or interests.

Section 4 of the Act exempts many offers of dispositions as follows:

Section 4. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, this act does not apply to offers or dispositions of an interest in land:

- (A) By a purchaser of subdivided lands for his own account in a single or isolated transaction.
- (B) If fewer than 25 separate lots, parcels, units or interests in subdivided lands are offered or to be offered after September 30, 1973.
- (C) On which lot, parcel or unit there is a commercial or industrial building, shopping center, dwelling unit, or apartment, or as to which there is a legal obligation on the part of the seller or his assignee or agent to construct such a building within 2 years from date of sale, lease, option, assignment, award by lottery, or as a prize.
- (D) For cemetery lots or interests.
- (E) A subdivision as to which the plan of sale is to dispose to 10 or fewer persons.
- (F) To any person who acquires such lots for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale; or constructing commercial or industrial buildings for his own use; or the lease of such lots to persons engaged in such business.
- (G) Pursuant to court order.
- (H) Securities currently registered or securities transactions exempted by order of the corporations division of the department of Consumer & Industry Services.
- (I) By a person electing to make offers or dispositions under any 2 or more different exemptions.
- (J) A campground developed pursuant to Act No. 171 of the Public Acts of 1970, being sections 325.651 to 325.665 of the Michigan Compiled Laws or a mobile home park developed pursuant to Act No. 243 of the Public Acts of 1959, as amended, being sections 125.1001 to 125.1097 of the Michigan Compiled Laws.
- (K) In a subdivision which has fewer than 50 lots, parcels, units or interests and which has been fully recorded under Act 288 of the Public Acts of 1967, as amended, being sections 560.101 through 560.293 of the Michigan Compiled

Laws, in the office of the register of deeds and in which no amenities are promised or advertised. Nothing in this subsection shall limit the application of section 27 to a developer or agent of a developer.

The act requires registration of subdivided land prior to the advertising, promotion, offering or sale of it. Financial assurances of performance on promises must be provided as well as full disclosure so the offering will not be deceptive or misleading. Unfair acts and practices are prohibited. Any subdivision required to comply with the Land Division Act of 1967, A 288, as amended, must do so prior to registration under this act. However, application may be made after the preliminary plat has been approved.

Penalties are up to \$25,000 and 10 years in prison for certain violations.

The Land Sales Act is very comprehensive and this discussion is not designed to give the full requirements. Anyone selling subdivisions or subdivided lands of 25 or more lots, parcels, units or interests in land should contact:

Department of Consumer & Industry Services
Administration - Policy and Legislative Affairs
Land Sales
P.O. Box 30004
Lansing, MI 48909
Telephone: 517-241-6318; Fax: 517-241-9822
www.michigan.gov

MICHIGAN'S RIGHT TO FARM ACT**P.A. 93, of 1981, as amended**

Because agriculture is Michigan's second leading industry and the state's second largest employer, the state has passed specific laws to assist farmers in defending their operations from complaints and lawsuits by nearby property owners. Real estate licensees who sell or rent property near a farm need to be aware of the law and notify buyers or renters that agricultural operations are nearby and that the farm may be protected by law.

What does the Act provide?

Public Act 93 of 1981, the Right to Farm Act, was enacted to provide farmers with some protection for their farm operation. Cases arise when people move to the countryside or into suburban areas near farmland, then later find that farm odors, dust, or noise are objectionable. They file complaints or lawsuits seeking to have the farm operation closed as a nuisance which may result in the farmer ceasing operations or being discouraged from investing in farm improvements. The law provides that farmers may defend themselves against this type of complaint or lawsuit by showing that they follow established practices.

What farming operations are included?

The law includes not just farming for crops and food products, but marketing produce at roadside stands or farm markets; generating noise, odors, dust, fumes, and other associated conditions; operating machinery and equipment including irrigation pumps and grain dryers; ground and aerial seeding and spraying; application of chemical fertilizers or organic materials, conditions, liming material and pesticides or use of alternative pest techniques; fencing, feeding, watering, housing, treatment and care of animals; management storage, transport, utilization and application of farm wastes or bypro, including manure; the employment and use of labor; and farm management.

What types of farms are included?

Michigan farms include raising plants and animals useful to human beings such as agriculture, horticulture, floriculture, silviculture, aquaculture, viticulture or apiculture. This includes forage and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, livestock including breeding and grazing, equine, seeds, grasses, nursery stock, trees and other similar products, or any other product which incorporates the use of food, feed, fiber or fur.

Additional Information

Copies of the Right to Farm Act or "Generally Accepted Agricultural and Management Practices for Manure Management and Utilization, Nutrient Utilization, or Pesticide Utilization and Pest Control" can be obtained from the Michigan Farm Bureau, the Michigan Department of Agriculture, the MSU Cooperative Extension Service or a local Soil Conservation District. For questions concerning a farm operation, contact the Michigan Department of Agriculture, P.O. Box 30017, Lansing, MI 48909; 517-373-2620.

Litigation of Interest

The Michigan Right to Farm Act has been used successfully in the defense of farm operations against nuisance suits. The most notable Michigan Court of Appeals cases include Northville Twp v. Coyne (1990), Steffens v. Keeler (1993), and Richmond Township v. Erbes (1992).

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES**OCCUPATIONAL BOARDS**

(By authority conferred on the director of the department of consumer and industry services by section 205 of 1980 PA 299, as amended, and Executive Reorganization Order No.1996-2, MCL 339.205 and 445.2001.)

PART 1. LICENSE AND REGISTRATION RENEWALS**R 339.1001 Definitions.**

(1) As used in these rules:

(a) "Act" means 1980 PA 299, as amended, MCL 339.101 et seq, and known as the occupational code.

(b) "State license fee act" means 1979 PA 152, as amended, MCL 338.2201 et seq,

(2) The terms defined in article 1 of the act have the same meanings when used in these rules.

History: 1979 ACS 8, Effective September 17, 1981. Amended 2000 MR 9 Effective August 31, 2000.

R 339.1002 Certain occupations; license and license renewal expiration.

Rule 2. (1) License and license renewals that are issued for the collection practices board, athletic board of control, private employment board, real estate board, cosmetology establishments and schools, and mortuary science trainees shall expire annually on the following dates and shall be renewed every year thereafter:

Collection practices	6/30.
Athletic board of control	8/31.
Private employment	12/31.
Real estate	10/31.
Cosmetology establishments and schools	8/31.
Mortuary science trainees	1/31.

(2) Licenses and license renewals that are issued for barber apprentices and student instructors shall be valid for a period of 1 year from the date of issue and may be renewed on the same date thereafter.

History: 1979 ACS 8, Effective September 17, 1981. Amended 1993 MR 8, Effective September 15, 1993.

R 339.1003 Certain occupations, license or registration renewals; expiration.

Rule 3. (1) Except as provided in R 339.1002 and subrule (2) of this rule, licenses or registrations and license or registration renewals that are issued for foresters, landscape architects, cosmetology, barbers, community planners, mortuary science, nursing home administrators, architects, professional surveyors, professional engineers, hearing aid dealers, accountancy, real estate appraisers, and residential builders and maintenance and alteration contractors, shall expire biennially on the following dates and shall be renewed every 2 years thereafter:

Foresters	5/31.
Residential builders and maintenance and alteration contractors	5/31.
Landscape architects	7/31.
Real estate appraisers	7/31.

Cosmetology	8/31.
Barbers	9/30.
Community planners	10/31.
Mortuary science	10/31.
Nursing home administrators	10/31.
Architects	10/31.
Professional surveyors	10/31.
Professional engineers	10/31.
Hearing aid dealers	11/30.
Accountancy	12/31.

(2) Licenses and license renewals that are issued for barber students shall be valid for a period of 2 years from the date of issue and may be renewed on the same date thereafter.

(3) A person, firm, or corporation that has been issued a license or registration pursuant to the provisions of article 7 of the act shall renew the license or registration on or before July 31 and shall renew it every 2 years thereafter.

(4) A license or registration that has a limitation may be renewed for a term that is less than the biennial period.

(5) For licenses that are to be renewed biennially, the department may initially renew half of the licenses for 1 year and half of the licenses for 2 years to provide equal numbers of renewals in each fiscal year.

History: 1979 ACS 8, Effective September 17, 1981. Amended 1993 MR 8, Effective September 15, 1993. Amended 2000 MR 9, Effective August 31, 2000.

R 339.1004 Biennial renewal fees.

Rule 4. (1) Biennial renewal fees shall be double the license or registration renewal fees that are prescribed in the state license fee act.

(2) The department shall prorate fees for initial licenses and registrations issued during a biennial period.

History: 1979 ACS 8, Effective September 17, 1981. Amended 1993 MR 8, Effective September 15, 1993.

R 339.1005 Rescinded.

History: 1979 ACS 8, Effective September 17, 1981. Rescinded 1993 MR 8 Effective September 15, 1993.

PART 7. DISCIPLINARY PROCEEDINGS

R 339.1701 Definitions.

Rule 701. (1) As used in these rules:

(a) "Adjournment" means an adjournment, stay, continuation, or delay of a contested case hearing at any time after the issuance of a formal complaint.

(b) "Administrative procedures act" means Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws.

(c) "Compliance conference" means the conference provided for in accordance with the provisions of section 92 of the administrative procedures act.

(d) "Days" means calendar days.

(e) "Department" means the department of consumer and industry services.

(f) "Informal conference" means the conference defined in section 504 of the occupational code, but does not mean a compliance conference provided in accordance with the provisions of section 92 of the administrative procedures act.

(g) "Licensing law" means a law under which the department issues a license, registration, or other authorization to practice an occupation or profession or render other services and includes the occupational code.

(h) "Occupational code" means Act No. 299 of the Public Acts of 1980, as amended, being §339.101 et seq. of the Michigan Compiled Laws.

(i) "Party" means a person, agency, or designated agent of the department named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

(j) "Presiding officer" means an administrative law judge who is employed by the department or a person who is designated, in writing, by the director of the department, to act as an administrative law judge and conduct a contested case hearing.

(k) "Respondent" means a person against whom a formal complaint has been issued.

(2) Except as provided in subrule (1) of this rule, a term defined in the administrative procedures act or the code shall have the same meaning when used in these rules.

History: 1990 MR 7, Eff. Aug. 1, 1990; 1997 MR 11, Eff. Dec. 3, 1997.

R 339.1703 Applicability of law and rules.

Rule 703. Compliance conferences, the processing of complaints, contested case hearings, and other related proceedings shall be conducted in accordance with the provisions of the licensing law, these rules, rules promulgated by a board or the department governing specific circumstances unique to the occupation, profession, facility, or service being regulated, and the administrative procedures act.

History: 1990 MR 7, Eff. Aug. 1, 1990.

R 339.1705 Issuance of license not bar to discipline.

Rule 705. The issuance of a license by the department does not diminish the authority of a board or the department to take disciplinary action based upon conduct which occurred before the issuance of a license without regard to whether the department or a board had notice of the alleged grounds for discipline at the time the license was issued.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1707 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1709 Determination of compliance with, or violation of, licensing law, rule, or order.

Rule 709. In determining a violation of, or compliance with, the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, the determination shall be made on the basis of compliance or violation at the time of the alleged violation.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1711 Rescinded.

History: 1990 MR 7, Effective August 1, 199. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1713 Time computations.

Rule 713. In computing a period of days prescribed or allowed by these rules, by order of a board or the department or the director, or by any applicable statute, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1715 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1721 Complaints; consolidation; withdrawal.

Rule 721. (1) The department may consolidate multiple complaints against a single respondent in 1 formal complaint.

(2) The department may withdraw a formal complaint at any time.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1725 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1726 Settlement of complaints.

Rule 726. (1) Parties may confer informally at any time to attempt to settle a complaint.

(2) A settlement shall be in the form of a proposed stipulation signed by all parties. The proposed stipulation shall be transmitted to the appropriate board for acceptance. If the board accepts the stipulation, a final order shall be issued. If the board does not accept the stipulation, the matter shall proceed to a contested case hearing.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1727 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1728 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1731 Written statement in place of compliance conference; conduct and**adjournment of compliance conference; failure to demonstrate compliance.**

Rule 731. (1) If a respondent selects a compliance conference, the respondent may submit a written statement with a request that the statement be considered in place of appearing for a compliance conference.

(2) A compliance conference shall be conducted informally by the department and shall not be conducted as an evidentiary hearing.

(3) A compliance conference may be adjourned by the department for good cause shown.

(4) If the department determines that the respondent has not demonstrated compliance, or if the respondent has waived his or her opportunity to show compliance, the matter shall proceed to a contested case hearing.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1741 Filing pleadings after notice of hearing; answers and amendments.

Rule 741. (1) A party may file an answer to a formal complaint.

(2) A formal complaint may be amended. If a formal complaint is amended, a presiding officer may find that the charges have been sufficiently altered as to warrant granting a respondent additional time to prepare a defense.

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1743 Consolidation of cases; procedure.

Rule 743. (1) Upon the request of a party or upon the presiding officer's own motion, the presiding officer may order a joint hearing of pending cases that involve substantial and controlling common questions of law or fact involving 1 or more respondents and 1 or more boards or other agencies of government.

(2) A party's request for the consolidation of cases shall be filed not more than 15 days after service of the notice of hearing. Copies of the request shall be served upon each party to the cases that would be consolidated. Not more than 10 days after service of the request for consolidation, the other parties may file a response. Unless a request for oral argument is made and granted, a determination on consolidation shall be made solely upon the written pleadings.

(3) Cases consolidated under this rule shall be joined for hearing to address the common questions of law and fact and to receive commonly relevant testimony and other evidence. Testimony or evidence that does not pertain to all of the consolidated cases may be received with an appropriate limitation on its use.

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1745 Appearance by counsel and service.

Rule 745. (1) The department may be represented by an assistant attorney general or by a duly authorized agent. A respondent may be represented by an attorney or may appear on his or her own behalf.

(2) After a notice of hearing has been served, an attorney or agent who represents the department or an attorney representing the respondent shall file a written appearance indicating that he or she represents a party. Thereafter, service made upon an attorney or agent of record who has filed an appearance shall be deemed service upon a party. If a written appearance is not filed, then service shall be made upon the party.

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1746 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1747 Prehearing conference.

Rule 747. (1) After a notice of hearing has been served and upon the request of a party, or upon his or her own authority, a presiding officer may order the parties to conduct a prehearing conference for the purpose of facilitating the disposition of a contested case.

(2) At the prehearing conference, the parties shall attempt, through agreement, to do all of the following:

- (a) State and simplify the factual and legal issues to be litigated.
 - (b) Admit matters of fact and the authenticity of documents and resolve other evidentiary matters to avoid unnecessary proof.
 - (c) Exchange lists of witnesses.
 - (d) Estimate the time required for the hearing.
 - (e) Resolve other matters that may aid in the disposition of the case.
- (3) The presiding officer shall participate in the prehearing conference unless the order scheduling the conference indicates otherwise. The parties may request rulings pertaining to matters of evidence, law, and procedure to the extent that such rulings may be made without the presentation of testimony, except that testimony may be presented upon agreement by the parties. A presiding officer's rulings at a prehearing conference shall govern the proceedings to the same extent as rulings made during a hearing. A record of requests for rulings, the response by the parties to requests for rulings, and the decisions thereon shall be made and shall become a part of the hearing record.

(4) The parties to a contested case are encouraged to voluntarily confer for the purpose of facilitating the disposition of the case.

(5) Upon the request of a party, or upon his or her own authority, a presiding officer may order a hearing reporter to attend and record a prehearing conference.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1751 Official notice of facts; notice; objection.

Rule 751. (1) The presiding officer may take official notice of facts pursuant to section 77 of the administrative procedures act upon the request of a party or on his or her own authority in accordance with this rule.

(2) If a noticed fact pertains to a material, disputed issue which is being adjudicated, the party who requested that official notice be taken shall notify all parties of the request not less than 15 days before the hearing, unless good cause is shown for the failure to give notice. A party may file objections to the taking of official notice not less than 10 days before the hearing if the party disputes the fact or its materiality. The objections shall set forth the basis for the dispute. Upon expiration of the time for the filing of objections, the presiding officer shall rule on the request and give notice thereof to the parties.

(3) If the presiding officer takes official notice of a fact on his or her own initiative, the parties shall be so notified if the fact pertains to a material disputed issue which is being adjudicated. A party may file objections to the taking of official notice within 10 days after service of the notice thereof if the party disputes the fact or its materiality. The objection shall set forth the basis for the dispute. Upon the expiration of the time for the filing of objections, the presiding officer shall sustain or overrule the objections and give notice thereof to the parties, at which time the decision becomes final.

(4) If an objection to the taking of official notice is not filed in a timely manner, official notice may be taken.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1753 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1755 Format of hearing; opening statement; closing statement.

Rule 755. (1) The format of a hearing in a contested case shall be as set forth in this rule.

(2) The parties shall be provided an opportunity to make an opening statement before the presentation of proofs. Either party may decline the opportunity and the respondent may defer the opening statement until after the proofs of the complaining party are presented.

(3) At the conclusion of the presentation of proofs by the respondent, the complaining party may present rebuttal evidence.

(4) At the conclusion of the presentation of proofs, the parties may present closing arguments. The party who bears the burden of proof shall present the first argument and may present rebuttal argument. If so stipulated by the parties or required by the presiding officer, closing arguments may be submitted in writing if submitted within 10 days of the conclusion of the presentation of proofs.

(5) The parties may submit briefs within such time as may be agreed upon or as determined by the presiding officer.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1757 Hearing decorum.

Rule 757. At a hearing, the presiding officer shall insure decorum within the confines of legitimate advocacy and the assertion of opposing views. A person may be excluded or the hearing adjourned, when necessary, to avoid undue disruption of the proceedings.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1759 Evidence; objections; rulings.

Rule 759. (1) Evidence may be retained in the custody of a person who is designated by the presiding officer if the retention is deemed necessary to preserve the evidence without undue interference with other legal proceedings. (2) Objections to the admissibility of evidence shall be made solely by the parties and on stated grounds. The proponent of the evidence shall be afforded an opportunity to respond.

(3) The presiding officer shall rule on objections with respect to the admissibility of evidence. A ruling on an evidentiary question shall be made on the record or reduced to a written opinion.

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1761 Evidence; prior adjudication of misconduct.

Rule 761. Proof of an adjudication of misconduct in a civil or disciplinary proceeding or of a judgment of guilt in a criminal proceeding may be used as evidence when relevant to establishing a violation of the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law. A copy of the court or agency record that verifies the adjudication of misconduct or judgment of guilt shall be admitted as evidence where there is no objection to its accuracy or authenticity.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1763 Formal complaint allegations; burden of proof.

Rule 763. The complaining party shall have the burden of proving, by a preponderance of the evidence, the matters alleged in the formal complaint.
History: 1990 MR 7, Effective August 1, 1990.

R 339.1765 Stipulations.

Rule 765. (1) The parties may enter into stipulations on questions of fact and issues of law, subject to the approval of the presiding officer.
(2) The parties may enter into stipulations on matters of procedure, subject to approval by the presiding officer.
History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1767 Witnesses.

Rule 767. (1) Upon a request and a showing of good cause, a prospective witness other than a party may be excluded from a hearing.
(2) Upon a request and a showing of good cause, a witness who has testified may be instructed not to communicate with a prospective witness regarding that testimony.
History: 1990 MR 7, Effective August 1, 1990.

R 339.1771 Findings of fact and conclusions of law; submission; recommendations.

Rule 771. (1) Unless the parties have otherwise agreed to a disposition of the matter or as otherwise provided in the licensing law, the presiding officer, at the close of the record on the matter, shall make findings of fact and conclusions of law. The presiding officer shall submit the findings to the appropriate board for the assessment of penalties if a violation of the code is found.

(2) If the presiding officer finds that the department has failed to meet its burden of proof or has otherwise not complied with the law or rules pertaining to the matter, he or she shall make findings of fact and conclusions of law to that effect.
History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

REFUND OF FEES

(By authority conferred on the department of consumer and industry services by section 5 of 1979 PA 152 and Executive Reorganization Order No. 1996-2, MCL 338.2205 and 445.2001.)

338.941 Definitions.

Rule 1. As used in these rules:

- (a) "Department" means the department of consumer and industry services.
 - (b) "Fee" means a fee for a permit, license, registration, examination, reexamination, certificate, verification, transfer, publication, or change of address.
 - (c) "Incapacitated" means an illness or injury which prevents a person from performing the occupation for which the person is licensed, registered, or certified.
 - (d) "Partial refund" means a refund of the fee paid minus a service charge of \$15.00.
- History: 1979 ACS 4, Effective November 19, 1980. Amended 2000, MR 9, Effective August 31, 2000.

R 338.942 Applicability.

Rule 2. These rules apply to all fees collected pursuant to 1979 PA 152, MCL 338.2201 et seq.
History: 1979 ACS 4, Effective November 19, 1980.

R 338.943 Issuance of full refunds.

Rule 3. (1) The department shall, upon its own initiative or upon a request made within 1 year of a fee validation date, issue a full refund for all of the following:

- (a) A duplicate payment.
- (b) Payment of a fee when none is required.
- (c) Payment of an amount in excess of the required fee.
- (d) A renewal fee, if a licensee dies or is incapacitated before the first day of a new license period.
- (e) A license, registration, or certification fee if the fee was collected at the same time as a separate examination fee and the applicant has failed the examination.

(2) A copy of a death certificate or a doctor's statement is required before the department shall issue a refund pursuant to subdivision (d) of subrule (1) of this rule.
History: 1979 ACS 4, Effective November 19, 1980.

R 338.944 Issuance of partial refunds.

Rule 4. (1) Except as provided in subrule (2) of this rule, the department shall issue a partial refund to a person whose application to take an examination or reexamination is withdrawn or denied 7 days before the date the examination is scheduled to be administered by the department.
(2) A partial refund shall not be issued to a person whose application has been denied after a formal hearing and shall not be issued if the examination fee is less than the \$15.00 service charge.
History: 1979 ACS 4, Effective November 19, 1980.

OCCUPATIONAL LICENSE FOR FORMER OFFENDERS
Act 381 of 1974

AN ACT to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to prescribe the use of the term "good moral character" or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon.

The People of the State of Michigan enact:

338.41 "Good moral character" and "principal department" defined.

Sec. 1. (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act, "principal department" means the department which has jurisdiction over the board or agency issuing the license.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.42 Judgment of guilt in criminal prosecution or judgment in civil action as evidence in determining good moral character; notice; rebuttal.

Sec. 2. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.

Sec. 3. (1) The following criminal records shall not be used, examined, or requested by a licensing board or agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to occupational or professional licensure:

(a) Records of an arrest not followed by a conviction.

(b) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest, and open manner.

(d) Records of an arrest or conviction for a misdemeanor for the conviction of

which a person may not be incarcerated in a jail or prison.

(2) A criminal record shall not be furnished to a licensing board or agency except by the principal department, and shall be furnished only after the director of the principal department or a person designated by the director has determined that the information to be provided to the board or agency meets the criteria set forth in this section.

(3) The director or a person designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction which prescribe the offenses or categories of offenses which the department considers indicate a person is not likely to serve the public as a licensee in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules to be promulgated. The rules shall be consistent with this act and promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Prior to the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the board or agency to be relevant to the ability or likelihood the person will serve the public in a fair, honest and open manner.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.44 Use of public records or other sources to determine person's fitness.

Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.45 Finding person unqualified; statement; rehearing.

Sec. 5. When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency with a statement to this effect. The statement shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a rehearing on the issue before the board if he or she has relevant evidence not previously considered, regarding his or her qualifications.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.46 Judicial review; statement; order.

Sec. 6. A person, aggrieved by a licensing agency or board determination regarding the person's possession of good moral character, if unsatisfied by his or her administrative appeal as provided in section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in this act, the court shall so state and shall order the board to issue the license, when all other licensing requirements are complied with.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

338.47 Power to discipline licensees not affected.

Sec. 7. This act does not affect the power of a licensing agency to discipline licensees under its jurisdiction for prohibited acts of professional misconduct or dishonesty.

History: 1974, Act 381, Eff. Apr. 1, 1975;--Am. 1978, Act 294, Imd. Eff. July 10, 1978.

STATE LICENSE FEE ACT (Excerpts)
Act 152 of 1979

AN ACT to provide for the establishment and collection of fees for the regulation of certain occupations and professions, and for certain agencies and businesses; to create certain funds; and to prescribe certain powers and duties of certain state agencies and departments.

The People of the State of Michigan enact:

338.2201 Short title.

Sec. 1. This act shall be known and may be cited as the "state license fee act".

History: 1979, Act 152, Eff. Jan. 1, 1980. Amended 1988, Act 461, Eff. Sept. 1, 1989. Amended 1990, Act 268, Eff. Oct. 17, 1990. Amended 1999, Act 171, Eff. Nov. 10, 1999.

338.2202 Definitions.

Sec. 2. As used in this act:

(a) "Department" means the department of consumer and industry services.

(b) "Occupational code" means 1980 PA 299, MCL 339.101 to 339.2721 of the Michigan Compiled Laws.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989. Amended 1999, Act 171, Eff. Nov. 10, 1999.

338.2203 Fees; use; disposition.

Sec. 3. (1) The fees prescribed by this act shall be used only to offset the cost of operating the department.

(2) Except as otherwise provided in sections 37, 38, and 51, the fees collected pursuant to this act shall be credited to the general fund of the state.

History: 1979, Act 152, Eff. Jan. 1, 1980;--Am. 1988, Act 461, Eff. Sept. 1, 1989;--Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990;--Am. 1993, Act 139, Imd. Eff. Aug. 2, 1993.

338.2205 Refund of fees; rules.

Sec. 5. (1) Except under rules promulgated by the department pursuant to this section or other applicable statute, a fee collected by the department, when paid pursuant to this act, shall not be refunded.

(2) The department shall promulgate rules concerning the refund of fees, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1979, Act 152, Eff. Jan. 1, 1980;--Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2206 Late renewal fee.

Sec. 6. The department shall charge a \$20.00 late renewal fee if a person fails to renew a license or registration on or before the expiration date prescribed by the department by rule as authorized under the occupational code.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989. Amended 1999, Act 171. Eff. Nov. 10, 1999.

338.2207 Duplicate license or registration; signed statement; fee.

Sec. 7. The department may charge a fee for the issuance of a duplicate license or registration. The duplicate shall not be issued unless the person applying for the duplicate signs a statement that the original document has been lost, stolen, or destroyed. The fee for the duplicate shall be \$10.00.

History: 1979, Act 152, Eff. Jan. 1, 1980;--Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2208 Written verification that person not licensed or registered; fee; charge for specific detailed information.

Sec. 8. (1) The department may charge a \$5.00 fee for providing written verification that a person is or is not licensed or registered at the time of the request for verification.

(2) If the person requesting written verification seeks specific detailed information beyond the information described in subsection(1), the charge for verification shall be \$15.00.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989.

338.2209 Publication and distribution of public act and rules; fee.

Sec. 9. The department may charge a fee for the publication and distribution of the public act from which a board's authority is derived and the rules promulgated under that act. The fee shall be \$2.00 or the cost of the publication, whichever is greater.

History: 1979, Act 152, Eff. Jan. 1, 1980;--Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2210 Correcting records and issuing new document; fee.

Sec. 10. The department may charge a \$10.00 fee for correcting its records and issuing a new document when a person notifies the department of a change of name, address, or employer. If the change does not require the issuance of a new document, no charge shall be made for correcting the department's records.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989.

338.2237 Real estate broker, associate broker, salesperson, or branch office; fees; registration of property approved under land sales act; real estate education fund.

Sec. 37. (1) Fees for a person licensed or seeking licensure as a real estate broker, associate broker, salesperson, or branch office or seeking other licenses or approvals issued under article 25 of the occupational code, MCL 339.2501 to 339.2518, are as follows:

(a) Application processing fees:

(i) Brokers and associate brokers as follows:

A. If paid through Sept. 30, 2003, or after September 30, 2007 \$20.00

B. Beginning October 1, 2003 through September 30, 2007..... 35.00

(ii) Salespersons..... 10.00

(iii) Branch office 10.00

(b) License fees, per year:

(i) Brokers and associate brokers 36.00

(ii) Salespersons 26.00

(c) Branch office fee, per year as follows

(i) If paid through September 30, 2003 or after September 30, 2007 10.00

(ii) Beginning October 1, 2003 through September 30, 2007 20.00

(d) Sale of out of state property:

(i) Application to sell..... 20.00
500.00

(ii) Property registration.....

(iii) Renewal of approval to sell..... 20.00

(2) A fee shall not be required for the registration of property approved under the land sales act, 1972 PA 286, MCL 565.801 to 565.835..

(3) The real estate education fund is established in the state treasury and shall be administered by the department. Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited with the state treasurer to the credit of the real estate education fund. The department shall utilize the real estate education fund only for the operation of departmental programs related to education required of all licensees or applicants for licensure under article 25 of the occupational code, MCL 339.2501 to 339.2518. Any unexpended balance in the real estate education fund at the end of a fiscal year shall carry forward to the next fiscal year.

(4) The real estate enforcement fund is created in the state treasury and shall be administered by the department. Beginning October 1, 2003, \$15.00 of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited into the real estate enforcement fund. The department shall utilize the real estate enforcement fund only for the enforcement of article 25 of the occupational code, MCL 339.2501 to 339.2518, regarding unlicensed activity as further described in section 601(1) and (2) and to reimburse the attorney general for expenses incurred in conducting prosecutions of such unlicensed practice. Any unexpended balance in the real estate

enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

History: 1979, Act 152, Eff. Jan. 1, 1980;--Am. 1980, Act 295, Eff. Jan. 1, 1981;--Am. 1981, Act 227, Imd. Eff. Jan. 7, 1982;--Am. 1983, Act 145, Imd. Eff. July 18, 1983;--Am. 1988, Act 461, Eff. Sept. 1, 1989;--Am. 2002, Act 623, Imd. Eff. Dec. 23, 2002;--Am. 2003, Act 87, Eff. July 23, 2003.

*** * Note * ***

Article 26 of the Occupational Code contains separate licensing mandates for those who appraise real property in Michigan. The "Definitions" section of this Act is reprinted here for information only to assist brokers and associate brokers who wish to know the circumstances under which a fee may be charged for a market analysis.

Appraiser licensing information may be obtained from:
Department of Consumer & Industry Services
Bureau of Commercial Services
Board of Real Estate Appraisers
P.O. Box 30018
Lansing, MI 48909
Telephone: 517-241-9201

BOARD OF REAL ESTATE APPRAISERS

ARTICLE 26

339.2601 Definitions.

Sec. 2601. As used in this article:

(a) "Appraisal" means an opinion, conclusion, or analysis relating to the value of real property but does not include any of the following:

(i) A market analysis performed by a person licensed under article 25 solely for the purpose of assisting a customer or potential customer in determining the potential sale, purchase, or listing price of real property or the rental rate of real property as long as a fee or any other valuable consideration is not charged for that analysis.

(ii) A market analysis of real property for a fee performed by a broker or associate broker licensed under article 25 which does not involve a federally related transaction if the market analysis is put in writing and it states in boldface print "This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser.". Failure to do so results in the individual being subject to the penalties set forth in article 6.

(iii) An assessment of the value of real property performed on behalf of a local unit of government authorized to impose property taxes when performed by an assessor certified under section 10d of the general property tax act, 1893 PA 206, MCL 221.10d, or an individual employed in an assessing capacity.

(b) "Appraiser" means an individual engaged in or offering to engage in the development and communication of an appraisal.

(c) "Certified general real estate appraiser" means an individual who is licensed under section 2615 to appraise all types of real property, including nonresidential real property involving federally related transactions and real estate related financial

transactions.

(d) "Certified residential real estate appraiser" means an individual who is licensed under section 2614 to appraise all types of residential and real property involving real estate related transactions and federally related transactions as authorized by the regulations of the federal financial institution regulatory agency and resolution trust corporation as well as any nonresidential, nonfederally related transaction for which the individual is qualified.

(e) "Federal financial institution regulatory agency" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the officers of the comptroller of the currency, the office of thrift supervision, or the national credit union administration.

(f) "Federally related transaction" means any real estate related financial transaction a federal financial institution regulatory agency or the resolution trust corporation engages in, contracts for, or regulates and that requires the services of an appraiser under any of the following:

(i) 12 C.F.R., part 323, adopted by the federal deposit insurance corporation.

(ii) 12 C.F.R. parts 208 and 225, adopted by the board of governors of the federal reserve system.

(iii) 12 C.F.R. parts 701, 722 and 741, adopted by the national credit union administration.

(iv) 12 C.F.R. part 34 adopted by the office of the comptroller of the currency.

(v) 12 C.F.R. parts 506, 545, 563, 564 and 571 adopted by the office of thrift supervision.

(vi) 12 C.F.R. part 1608, adopted by the resolution trust corporation.

(g) "Limited real estate appraiser" means an individual licensed under section 2611 to perform appraisals of real property not involving federally related transactions or real estate related financial transactions that require the services of a state licensed real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser.

(i) "Real estate related financial transaction" means any of the following:

(i) A sale, lease, purchase, investment in, or exchange of real property or the financing of real property.

(ii) A refinancing of real property.

(iii) The use of real property as security for a loan or investment, including mortgage-backed securities.

(j) "Real property" means an identified tract or parcel of land, including improvements on that land, as well as any interests, benefits, or rights inherent in the land.

(k) "Residential real property" means real property used as a residence containing a dwelling that has not more than 4 living units.

(l) "State licensed real estate appraiser" means an individual who is licensed under section 2613 to appraise real property, including, but not limited to, residential and nonresidential real property involving federally related transactions and real estate related financial transactions.

(m) "Uniform national standards of professional appraisal practice" means those standards relating to real property adopted by the appraisal foundation on March 31,

1999 or as adopted by rule of the director.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980; – Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990; –Am. 1994, Act 125, Imd. Eff. May 18, 1994; – Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

Cited in other Sections: Sections 339.2601 to 339.2635 are cited in §338.2238.